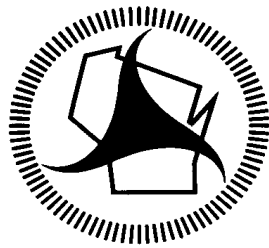


AIRPORT OWNER'S GUIDE TO LAND ACQUISITION



**Wisconsin Department of Transportation
Division of Transportation Infrastructure Development
Bureau of Aeronautics**

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Issued November 1997

INTRODUCTION

Airport owners occasionally need to acquire land for expansion of the airport or to protect the approaches to the runways. The State of Wisconsin and the Federal Aviation Administration (FAA) have limited funds available to assist municipal airport owners and privately owned reliever airports acquire needed land.

This document provides guidelines that, if followed, will allow property acquired by the airport to be considered eligible for funding or reimbursement if, and when, the property is needed for an eligible airport construction project.

The procedures outlined in this guide accomplish several purposes:

1. Protect the rights of property owners.
2. Assure that public funds are used in an equitable manner.
3. Assure uniform treatment of all parties.
4. Address the various state and federal laws.

With this guide we hope to give a basic outline of the procedures for acquiring land for public use and also, where to find the detailed information. There are no “short cuts” or “easier ways” to accomplish land acquisition if there is, or will be, any federal or state funding in any phase or portion of the projects, or if federal or state reimbursement may ever be requested. We encourage reference to the applicable federal and state laws, rules and regulations.

Of course, the Bureau of Aeronautics (BOA) is always available to give whatever assistance or advice is needed.

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I. PRELIMINARY ACQUISITION PROCEDURES

FAA 5100.38a, ch .6, sec. 1

The airport owner, either a corporation or a municipality, or their agent, hereafter referred to as the **Sponsor**, must follow certain steps to assure that acquisition procedures are followed according to federal and state guidelines. FAILURE TO FOLLOW THESE PROCEDURES COULD RESULT IN LOSS OF FEDERAL OR STATE FUNDING OR REIMBURSEMENT. FUNDING OR REIMBURSEMENT IS ALWAYS SUBJECT TO THE AVAILABILITY OF STATE AND FEDERAL FUNDS AND THE PROJECT'S PRIORITY.

A. DETERMINE NEED AND POTENTIAL FOR FUNDING OR REIMBURSEMENT

1. REQUIREMENTS FOR ELIGIBILITY

The approved Airport Layout Plan (ALP) serves as a primary basis for determining the areas of land necessary for the airport.

Land necessary for airport purposes includes the building areas, runways, taxiways, aprons, runway protection zones, approach areas, areas for noise compatibility, and offsite areas required for airport utilities and navigation aids.

Acquisition of land for future (more than five years) airport development is eligible if there is an approved ALP, approval by FAA, airspace clearance and a valid aeronautical need. Such factors as rising land costs, encroachment on available land by incompatible uses and development, and the probable unavailability of land for airport use in the future should be taken into consideration.

Land outside the DNL 65 dB contours on the noise exposure map (current or 5 year) is not eligible for federal noise compatibility funding.

FUNDING OR REIMBURSEMENT IS ALWAYS SUBJECT TO THE AVAILABILITY OF STATE AND FEDERAL FUNDS AND THE PROJECT'S PRIORITY.

2. FINANCING OPTIONS FOR LAND ACQUISITION

a. Land Loan

The Land Loan Program is available to assist sponsors purchase land. The Land Loan is a revolving fund, administered by the

Bureau of Aeronautics (BOA), which loans money to airport sponsors to acquire land for airports. Loans of up to 80% of the estimated cost of acquiring land, at an annual interest rate of 4%, for five years, are available for acquiring land for airport projects or to assure compatible land uses around airports.

b. State Aid

State Aid, in the form of grants from the state and administered by the BOA, financially assists airports in acquiring land and planning and construction.

c. Federal Aid Grants

Federal Aid Grants are grants from the federal government, administered by the BOA, for land acquisition and construction projects for Primary Commercial Service Airports.

d. Block Grant

Block Grants are federal grants administered by the BOA for Non-Primary commercial Service, Reliever Service and General Aviation Airports.

e. Sponsor Only Funding

There are occasions when it is in the best interests of the airport to purchase property with no outside funding. Certain situations may not allow the time necessary to apply for grants or loans even if funds are available. Occasionally, a delay of even a few days can be very expensive. If another party buys a property the airport will, in the future need, and constructs a home or business on the parcel, the costs multiply. The purchase of the land would then include the improvements and relocation costs. If the property and purchase meet all the criteria, it may be eligible for reimbursement in the future.

3. REIMBURSEMENT

Bureau of Aeronautics policy is to reimburse for associated land acquisition, when funds are awarded for a construction project, based on availability of funds.

FAA may issue individual grants to Primary Commercial Service Airports for land acquisition prior to construction.

4. TYPE OF ACQUISITION

- Fee simple (Purchase of land outright)
- Clear Zone Easement (Purchase of airspace from the ground up. Frequently the land may, for instance, still be farmed with low-growth crops and fenced.)
- Avigation Easement (Purchase of airspace above a height determined by the approach requirements of the Airport Layout Plan. Gives a right of unobstructed flight in the established airspace.)

Eligible land acquisition should normally be fee simple; however, some lesser interest may be acquired in the form of easements when appropriate.

There will be instances where it is prudent for a sponsor to acquire an entire parcel of land rather than a specific portion which is the minimum needed for airport projects.

B. TITLE REPORTS TO DETERMINE OWNERSHIP

FAA 5100.38a, Ch. 6, sec 2

It is important to establish ownership of each parcel, and know what will be required to get a clear title. A title insurance company should be requested to write a Title Report in the form of a Title Insurance Commitment on each parcel to be acquired. The commitment should show the names of all owners, any mortgages, easements, liens or encumbrances, delinquent taxes, special assessments, judgments, and other documents of record. They will, upon request, hold this commitment open until the property interest is acquired, at which time, they will update the commitment and issue a Title Insurance Policy. Costs for obtaining title insurance for land purchased is not a federally reimbursable expense, however, the state does share the expense on a 50/50 basis.

A careful study of the title commitment will show if there are easements which should be eliminated or subordinated, or liens which need to be paid off to clear the title. When acquiring an easement or a partial interest, any mortgagee of the fee should either execute a partial release or partial relinquishment, join the execution of the easement grant insofar as its interest appears, or execute a subordination agreement which should be recorded with the easement. There is a guide in the appendix detailing what to ask for when ordering title insurance. (*See Appendix page 101*)

C. SURVEYS, LEGAL DESCRIPTIONS AND EXHIBIT "A" MAPS

Surveys should be made of each property to be acquired. The surveys will be the basis for the appraisals, legal descriptions, Relocation Orders, conveyance documents, the Exhibit "A" map, land inventory map, and airport property maps.

1. CONTENT OF LAND SURVEYS:

- A legal land description of each parcel by metes and bounds (distances and bearings)
- Number each property line. Identify each boundary leg crossing a runway centerline or extended centerline as two legs (such as 1a & 1b). Provide the state plane coordinates (1983 datum) of the intersection point.
- Show section corners.
- Show the state plane coordinates (1983 datum) of at least one corner of the survey, as tied to a point within the existing airport lands. The station and state plane coordinates of the end of the runway must be shown.
- Monument property corners and property line/runway center-line intersection points (if directed to do so).
- Show all easements of record.
- Give land areas in both square feet to the nearest hundredth and acres to the nearest thousandth. When highway right-of-way land has not been dedicated, show property areas in both gross and net.
- Improvements such as buildings, wells, septic fields, underground storage tanks (if known) and prominent land and landmark features should be shown.
- The following Authorization Certificate, or a similar one, must be included for compliance with Wisconsin Ss 236.21.

I, _____ (Surveyor) _____, Land Surveyor, do hereby certify that I have surveyed, monumented and mapped the above-described land.

I hereby certify that I have been authorized, under the direction of _____ (Sponsor) _____, to survey, monument, map and describe the land shown on this _____ (Map/survey) _____.

I further certify that this ____ (Map/survey) ____ is a correct representation of all the exterior boundaries of the land surveyed and the subdivision of it, and that I have fully complied with the provisions of Chapter 236 of the Wisconsin Statutes and the ____ (County of locale) ____ Subdivision Control Ordinance in surveying, dividing and mapping the land.

Surveyor name _____ Registration/stamp
Company name _____
Project number _____ date _____

2. SURVEYING AVIGATION EASEMENTS

In addition to the above, for all avigation easements, show on the map/survey the following:

- Show the Mean Sea Level (M.S.L.) elevation to the nearest 1 foot of ground (terrain) at the property corners, and M.S.L. elevation and height above ground of avigation easement airspace intercept at the property and easement corners, runway centerline and other key points.
- Monument easement corners coincidental with fee simple property corners and lines; however, where cumbersome or unsafe, such corners may be staked by less permanent means such as wood stakes, lath or other means (flagging, if appropriate, to make such corners easily seen).
- Show most prominent structures and /or trees which constitute obstructions encroaching into avigation easement airspace. Show height above ground of obstructions (tops) and elevation of avigation airspace intercept at those obstructions.
- Show ground elevation of prominent land features such as knolls. Show height above ground of obstructions (tops) and of elevation of avigation airspace intercept at those which are obstructions.
- Show most prominent structures, land features, trees, etc. that are not obstructions, show their height above ground and elevation of avigation airspace above them.

3. TYPE OF LAND SURVEY

Regulatory authorities within each county set forth specific procedures and/or limitations on filing and/or recording of these surveys. The

surveyor should become familiar with the procedures established for the county where the property is located and recommend the appropriate survey type:

- Certified Survey Map
- Property survey
- Survey Plat
- Plat of survey

4. EXHIBIT “A” MAP

FAA Orders 5100.38a, ¶1009; 5190.6a, 4-17 & AC 5100-17 fig. .1-1

A map, clearly identifying all land which is designated airport property, whether in fee or easement, and all parcels to be acquired for the airport, is required. The map, known as the Exhibit “A” map, should show each parcel’s proximity to the airport, the property owner’s names, acreage to be acquired, interest to be acquired, and a parcel number. As parcels are identified for acquisition, consecutive numbers should be assigned to them for record keeping purposes.

Whether or not the federal or state government has participated in the cost of acquiring any or all land for the airport, it relies on the Exhibit “A” map to identify airport lands prior to any subsequent grant of funds. Any land identified on the Exhibit “A” map may not thereafter be disposed of or used for other than airport purposes without FAA &/or state consent as appropriate.

An Exhibit “A” map will be required at the time when reimbursement or a future grant is requested. This map should:

- Clearly identify the outside airport boundary.
- Delineate the existing runway configuration, building restriction lines, future runways, and existing and future airport approach areas.
- Identify, clearly, all land which is now, or is to be developed or used as part of, or in connection with, the current or proposed airport project. Fee title, or lesser interest in land, to be acquired by the sponsor, should be identified on the map by parcel or tract, according to existing or prior ownership. All interests held, or to be acquired, (e.g., avigation, drainage, and utility easements, permits, etc.) should be described in legend fashion.

- Show property interests now held, or to be acquired, as part of the project. Indicate those areas for which federal or state aid is requested for current aeronautical use, noise abatement, land and other improvements to be acquired under the project.
- Show the location of the easements or other encumbrances which are tangible, with a brief descriptive note.
- Show any approved land release or consent to use for non-airport purposes.

Additional sheets of the property map showing metes and bounds description of land to be acquired and blowups of individual parcels may be used to clearly show the details of all projects.

D. RELOCATION ORDER

Wis. SS 32.05(1)

Any sponsor, or unit of government purchasing property must issue a Relocation Order. The Relocation Order serves to notify the public that the project includes the taking of lands by an agency with the power of eminent domain. This order must include a map or plat showing the laying out, relocation and improvement of the airport facilities; the old and new locations; and the lands and interests to be acquired. A copy of the order must, within 20 days after its issue, be **filed with the county clerk** of the county wherein the lands are located. No relocation order is necessary if the total property acquisition for the project will be less than \$1,000. If there are changes in the project, the Relocation Order **must** be corrected and refiled prior to any condemnations.

E. WETLANDS AND ARCHEOLOGICAL SITES

Prior to any grading, filling, digging, construction or “grubbing on the properties it will be necessary to have them examined for wetlands and any archeological interests. If you think there may be wetlands or something else that may be of archeological significance on any of the properties to be acquired, contact the Bureau of Aeronautics and discuss it with your project manager.

F. HISTORIC PROPERTIES

If any site has structures, improvements or other items of potential historical interest or architectural merit; or has structures or improvements that are estimated to be 50 years old or older, further investigation will be necessary to determine their historical significance. No disturbance, disposal, razing, or other site clearance may be done prior to such investigation. If you think there may be something of historical significance on any of the properties to be acquired,

contact the Bureau of Aeronautics and discuss it with your project manager.

G. AGRICULTURAL IMPACT STATEMENT

Wis. SS 32.035

The Department of Agriculture, Trade and Consumer Protection (DATCP) must be notified of any project which may involve the acquisition of an interest in land from a farm operation through the use, actual or potential, of eminent domain powers. Acquisition of easements, fee simple rights to property and leasehold interests may all trigger the need for an Agricultural Impact Statement (AIS) if the property interests **COULD** be acquired by your agency or unit of government by condemnation.

The Department will prepare an Agricultural Impact Statement if the project involves an interest in more than 5 acres of any farm operation; or involving an interest in 5 or fewer acres in any farm operation, if the acquisition/condemnation would have a significant effect on any farm operation as a whole. A “farm operation” means “any activity conducted solely or primarily for the production of one or more agricultural commodities in sufficient quantity to be capable of contributing materially to the operator's support.”

The DATCP has 60 days to prepare an AIS once they have all the necessary information. There is a preparation fee, which must be paid prior to DATCP publishing the AIS. The acquiring agency **may NOT negotiate** with, or make a jurisdictional offer to a landowner, until **30 days** after the AIS is published and distributed to the required recipients. If agricultural land is to be purchased you may wish to call the Bureau of Aeronautics and discuss it with your project manager. *(Summary of Agricultural Impact Statement Requirements and Procedures. Further information is available from DATCP Environmental Evaluation Section.)*

H. HAZARDOUS MATERIALS AND ASBESTOS ABATEMENT

An investigation for the presence of hazardous material should be done as part of these preliminary procedures. It is recommended that a consultant be hired to investigate for hazardous substances; including asbestos if buildings are to be purchased. Razing contractors are generally not licensed to perform this work.

Since clean up of these sites can be extremely costly, the first ‘defense’ is to avoid contaminated sites if at all possible. Should a contaminated site be purchased, the responsibility and costs for the clean up could very well be borne by your company or municipality. **The costs of “clean ups” are not eligible for state or federal reimbursement.** Unless you are very sure there is no risk of hazardous materials, you may wish to contact the Bureau of Aeronautics and discuss it with your project manager.

I. SEPARATION OF DUTIES

FAA 5100.37a, 3-1,b

To insure federal or state participation, all agencies must comply with separation of function requirements when federal or state funds are involved in any part of the project. Separation of function requires the person who conducts the negotiations must not make the appraisal or act as the review appraiser, except that the appraiser may be permitted to negotiate an acquisition where the value of the acquisition is \$2,500 or less.

J. RELOCATION PLAN AND ASSISTANCE SERVICE PLAN

FAA 5100.37a, 4-6; DOC, Ch. Comm 202; Wisconsin DOT Relocation Assistance Manual, Ch.9

On occasion, it is necessary to displace owners or tenant occupants and remove structures or improvements in preparation for an airport project. The displaced occupants of these properties may be eligible for certain relocation benefits and protections that go beyond the just compensation allowed under the Fifth Amendment of the Constitution. Provisions for benefits for those displacees are outlined in the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The stated purpose of the Uniform Act is to ensure that affected persons will not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole, and to minimize the hardship of displacement on such persons.

In general, the Uniform Act provides for the payment of certain relocation costs, over and above the just compensation, or fair market value amount determined in the appraisal process, for the real property. These benefits may include moving costs, incidental closing costs, increased financing costs and, in certain cases, assistance with replacement housing costs. Displaced business owners and tenants may be eligible for moving and re-establishment expenses. *(See Chapter 3, Relocation Assistance, page 46.)*

1. GENERAL REQUIREMENTS

If an acquisition will involve the displacement of individuals, families, business concerns, farm operations or nonprofit organizations, a Relocation Plan must be developed for the project. The primary intent of a relocation plan is to identify the needs of occupants who are going to be displaced, and to relate this to the available supply of comparable replacement properties. **The Relocation Plan, which examines the potential problems associated with the displacements, must be approved by Department Of Commerce prior to any acquisition activities.** Identified need and/or housing shortages will directly impact the cost and time requirements for the successful relocation of displaced persons.

The relocation plan should include; the project description, name, purpose, location, overall project activity, administrative organization and staffing for relocation assistance, type and occupancy status of displacement property, and a timetable for project implementation. It should also include; an identification and description of potential displaced persons, a description of the properties occupied, an identification and assessment of available replacement resources, a correlation of replacement resources with each person's needs, financial means, and an estimate of relocation payments.

If the sponsor or agency does not have qualified personnel, the BOA can supply a list of qualified private contractors, known as Relocation Consultants, to assist in preparing the Relocation Plan and the subsequent Relocation Assistance.

2. STATE AND FEDERAL RELOCATION LAWS

All relocation activities must be performed in accordance with the federal and state laws: the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (Uniform Act) and the Federal Common Rule, 49 CFR, Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, for implementation of the Uniform Act; and Wisconsin Department of Commerce (DOC), Administrative Rule, COMM 202.

K. DEFINING THE “TAKING” FOR APPRAISER

When all of the above steps have been accomplished, if they are necessary, the next step is to carefully define what “rights” will be “taken” for each parcel. The appraiser will need to know exactly what should be appraised.

1. WHOLE TAKING

Fee Simple is defined as: “an estate under which the owner is entitled to unrestricted powers to dispose of the property, and which can be left by will or inherited. Commonly, a synonym for ownership.”

A Fee Simple “Whole Taking” is the easiest to define for the appraiser. The appraiser can be told that the “taking” will be a fee simple taking of the entire property.

2. PARTIAL TAKING

a. Fee simple

A Fee Simple, “Partial Taking” is buying a portion of the land in Fee Simple, e.g. Decide how much land is needed (say $\frac{1}{2}$), have it surveyed, have new legal descriptions written for both parts, and purchase the needed parcel in Fee Simple, leaving the remainder to the property owner.

b. Easements

Clear Zone and Avigation Easement instructions to the appraiser are not as simple. Once the taking is defined, and the detailed surveying (*See Section I. C. on page 11 about surveys*) completed, the actual easements have to be drafted for inclusion in the appraisals.

II. APPRAISAL AND OFFERING PRICE PROCESS

FAA 5100.37A, Chapter 2 and Wisconsin 32.05

A. APPRAISAL STANDARDS

Appraisal Guidelines are included in the Appendix section. It is advised that the appraiser be furnished with a copy of these guidelines. (*Appendix page 97*)

1. GENERAL

As soon as it is feasible, notify the property owners of an interest in acquiring their property. They must be informed of the basic protections afforded them by the Uniform Act, 49 CFR Part 24, and Wisconsin Statute, Chapter 32. At this time property owners should be given the DOC pamphlet entitled "The Rights of Landowners Under Wisconsin Eminent Domain Law"

and the applicable relocation rights pamphlets; "Wisconsin Relocation Rights - Residential" and "Wisconsin Relocation Rights - Business, Farm and Non Profit Organizations."

Before the initiation of negotiations, the property must be appraised. The owner, or owner's designated representative, **must** be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

A realty/personalty (real estate, real property vs. personal property, moveable property) determination is necessary prior to the appraiser commencing the assignment. For complex appraisals, a formal determination should be developed in consultation with the property owner and affected tenants. Some items may require advice of legal counsel to determine whether the item is a fixture to real estate or personal property.

Before the initiation of negotiations the sponsor will establish an amount which it believes is just compensation for the real property. The amount may not be less than the approved, appraised fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.

2. DOCUMENTATION

Each appraisal must be sufficiently supported by pertinent factual data and in such detail as to reveal that the appraiser has made an adequate study and analysis of the property value in the area involved, that all pertinent and reliable data has been considered, and that sound, logical reasoning in

developing conclusions as to the market value of the property involved has been used. Such conclusions must be based upon basic, approved, appraisal techniques. Therefore, **the mere opinion of an individual, whether or not a qualified appraiser, and regardless of the status or position in the community or area involved, unsupported by pertinent factual data, does not constitute, and is not acceptable as, an appraisal.**

3. **APPRAISING LESS THAN FULL FEE SIMPLE INTEREST**

FAA 5100.37a, 2-5

Where the acquisition involves only a portion of the property, the appraiser must develop the severance damage, if any, to the remainder, including the reasoning and sales data to support the conclusion. The parcel to be examined by the appraiser is the entire land titled to the same owner and contiguous to the parcel to be acquired. The 'before and after' method of appraisal is expected to be used. In most cases where a property will be divided or some rights (but less than full fee) will be taken, a 'full narrative or detailed appraisal' will be required. If the situation is such that the remainder may be an uneconomic remnant, the appraiser should so indicate; however, it is the responsibility of the sponsor to make this decision. Occasionally, there will be a parcel that could be purchased in fee simple, but an easement would suffice. In that case, doing the "before and after", full narrative appraisal (*see page 24*) will actually give both prices.

When only a small amount of land is being acquired from a large tract and the remainder is not being materially affected, such as a change in the highest and best use or evidence of diminution of value, only that area being acquired needs to be appraised. In these instances, the highest and best use of the part to be acquired must reflect the same highest and best use of the remainder. Examples of less than full fee interest acquisitions are;

- **PART OF WHOLE IN FEE SIMPLE**
Fee simple acquisition of only a part of an owner's property.
- **CLEAR ZONE EASEMENT**
An easement that restricts all building, and growth of trees or plants from the level of the ground. The land itself is not acquired. Usually the land can still be used for the farming of low growing plants. An Avigation Easement should always be included with a Clear Zone Easement taking.
- **AVIGATION EASEMENT**
An easement giving a property interest in air space over a particular portion of ground, providing for, among other things, the

right of flight; the right to cause noise and dust, etc.; the right to remove all objects protruding into the airspace and the right to enter the land to enforce the rights required. The airspace height is determined by the approach requirements of the Airport Layout Plan. The degrees of such restriction will vary in accordance with the airspace necessary for the safe use of an airfield's runway.

- **LIFE ESTATES** *FAA 5100.37a, 2-27 & 3-10*

A life estate is the right to reside on the property until death even though the property is sold. It is not a recommended method of land acquisition and it is unlikely that either FAA or BOA will approve reimbursement of land purchased with a life estate granted until the life estate has been extinguished.

4. APPRAISER'S CERTIFICATION

FAA 5100.37a 2-8

Each appraisal must contain an appraiser's certification that states that the property owner, or their representative, was afforded the opportunity to accompany the appraiser during the appraiser's inspection of the property. The certificate must also state that to the best of his or her knowledge and belief, the appraisal was conducted in an objective manner and that the conclusions are correct. A new certificate will be prepared when there is a change in the appraisal report which affects the estimate of just compensation or changes the date of valuation. A Certification by Appraiser, in the appendix, is a format that may be used. *(See Appendix page 93.)* **(Note: The certification regarding the owner being invited to accompany the appraiser during the inspection is required.** The appraiser may add such language to the standard certificate required in accordance with the Uniform Standards of Professional Appraisal Practice.)

5. INFORMATION FURNISHED BY SPONSOR

FAA 5100.37a 2-9

As soon as possible, the sponsor must furnish the appraiser with the following information in order to permit the orderly completion of the appraisal:

- All pertinent or known title information which may affect the value of the property including encumbrances such as outstanding mortgages, leaseholds, liens, easements, and restrictive covenants, if any. Mineral, oil and gas rights should also be identified. It is the appraiser's duty to verify and/or supplement all information.
- Prior to commencing work on preparation of the appraisal, the

appraiser should be given the hazardous materials assessment reports and specific instructions to consider the impacts on value of the parcel to be appraised. The appraiser is usually not a specialist or expert on handling hazardous materials or in the cost of control, clean-up or removal, and should not be expected to make these determinations. These matters and related costs should have already been determined by the hazardous materials consultant and the information should be given to the appraiser for consideration in valuing the property. Generally, the property should be appraised as if clear of contamination.

- Rights or interests to be acquired.
- Where it is desired that the appraiser determine an after value based on the premise that certain adjustments to the improvements are to be made, the appraiser should be specifically advised of such adjustments. Construction features to be undertaken to mitigate damages are considered as adjustments for the purposes of this paragraph.
- Acquisition plans. Plats, maps and surveys of the properties showing boundaries, dimensions, locations of improvements, areas to be acquired, remainders and all other significant features should be furnished for the appraiser's use.
- Copies of all proposed deeds and easements.
- Information on construction items that might have a bearing upon the appraisal.
- On questionable individual cases, legal counsel should be retained for an interpretation of state laws regarding benefits, lists of damage items considered to be noncompensable and instructions on what to consider in the valuation.
- As applicable, realty/personalty determination.

B. TYPES OF APPRAISALS

Wis SS 32.05 & 32.09 and FAA 5100.37a, Chapter 2

It would be advisable for the appraiser to become familiar with Wisconsin Statutes, Chapter 32 and FAA Order 5100.37a, Chapter 2 prior to beginning the appraisal process. *(Copies can be obtained from the Wisconsin DOT, Bureau of Aeronautics, Real Estate, at PO Box 7914, 4802 Sheboygan Ave., Madison, WI 53707-7914 or by calling (608)266-1906 and requesting copies.)*

1. FULL NARRATIVE OR DETAILED

FAA 5100.37a Sec. 3

Wisconsin law requires “a full narrative appraisal” except for parcels that qualify for a Short Form or a Nominal Value Finding as detailed in Chapter II., B., 2 & 3 (*see page 28*) A full narrative appraisal must contain the following;

a. Purpose of the appraisal

The purpose of the appraisal will be stated, which includes a statement of value to be estimated and the rights or interests being acquired.

b. Description of the property

- Legal description
- Parcel number as it relates to the airport’s Exhibit “A” map
- Name of apparent owner(s) of each interest being evaluated
- Pertinent title information
- Location of property
- A minimum of 5 years sales history of the property
- Statement of known and observed encumbrances, including existing aviation easements, leases, signs, etc., if any
- Total area of property in acres &/or square feet
- Area of each interest in property being acquired in acres &/or square feet
- Present use and zoning and, if available, the potential use as reflected by a local comprehensive land use plan
- Utilities, existing and available
- Type and condition of all above/below ground improvements and special features that may add to or detract from the value of the property
- Any tenant-owned improvements must be identified

c. Documentation

- Highest and best use
- Before and after valuation method should be used in partial acquisitions except where it is obvious there is no damage or benefit to the residue land or improvements.
- Less than full fee title. Easements and partial acquisitions should be prepared on the before and after basis.
- Approaches to value should include sales, cost and income, except when there are sufficient market sales data comparable to the property being appraised, in which case the appraiser may rely on the sales comparison approach only. However, when an approach is not used, the appraiser should state why it was not used.
- Benefits are to be offset against the value of the part acquired and/or damages to the remainder in accordance with Wis SS 32.09 (6). The after value appraisal must eliminate any consideration of damages that are not compensable or benefits not allowable under state law even though they may exist in the ultimate value of the remaining property on the market.
- The appraisal of the after value must be supported to the same extent as the appraisal of the before value.
- The difference between the before and after will represent the value of the property to be acquired including the damages and/or benefits to the remainder property. The appraiser must separately analyze and tabulate the difference showing a reasonable allocation to land, improvements, damages, and benefits.
- When more than one approach to value is used, the appraiser must show a correlation of the separate indications of value derived by each approach along with the reasonable explanation for the final conclusion of value. This correlation will be included for both before and after appraisals.
- All appraisals should include photographs of the subject

property including all principal above-ground improvements or unusual features affecting the value of the property to be acquired or damaged.

- An appraisal for a property being totally acquired should contain a sketch or survey of the property showing boundary dimension, location of above and below ground improvements, access (public/private roads), and other significant features of the property. For a partial acquisition, the sketch or survey should also show the area to be acquired, relation of improvements to the acquired area, and area of each remainder. For an appraisal of residential improvements, a sketch should be included depicting the interior room layout.

d. Comparable sales

Each appraisal must contain or make reference to the comparable sales that were used in arriving at the market value estimate.

The appraiser must state the date of sale, names of parties to the transaction, consideration paid, method of financing, conditions of sale and with whom these were verified, the location/address of the sale property, total area, type of improvements, easement encumbrances, mineral, oil, gas interests included in sale, appraiser's estimate of highest and best use at the date of sale, zoning, and any other data pertinent to the analysis and evaluation thereof.

If the appraiser is unable to verify the financing and conditions of the sale from the usual sources such as buyer, seller, broker, title company, etc., it will be so stated.

Pertinent comparable sales data should include identified photographs of all principal above ground improvements of unusual features affecting the value of the comparable sale.

The appraiser should prepare a comparable sales map showing the location of the sale properties and their relation to the project.

A data and analysis sheet must be prepared for each sale or listing used as a comparable in the preparation of an appraisal

For noise impacted properties, sales used as comparables must be as similar as possible to the property being appraised as to noise,

location, community services, size, time of sale, and the terms of the transaction. The current market value of the subject property is appraised as it presently sits on the existing site since valuation of noise impacted land through the appraisal process is accomplished in the same manner as land being appraised for an airport development project.

If comparable sales can not be found in a similarly noise impacted neighborhood as the subject property, the appraiser can move farther out from the impacted area to where comparable sales can be found; however, in these instances, appropriate adjustments must be made to reflect the actual market value of the subject property in its current environmental condition as affected by noise.

Selecting sales as comparables with the specific intent of using only those sales outside of the airport influence or noise impacted areas is not an acceptable practice.

e. Inspection of properties

All property appraised, and the comparable sales that were relied upon in arriving at the market value estimate, will be personally inspected by the appraiser. All dates of such inspection will be shown in the appraisal. The owners of the subject property, or their representative, must be given the opportunity to accompany the appraiser while inspecting their property.

f. Date of valuation

This is the effective date to which the appraisal valuation data applies.

g. Assumptions and limiting conditions

Include a statement of appropriate assumptions and limiting conditions, if any.

h. Certification

Include the certification, which must have the signature, and date of signature of the appraiser, and a clause that the owner, or their representative, was given the opportunity to confer with, and accompany the appraiser during the inspection of the property. *(See Appendix page 93)*

2. SHORT FORM

FAA 5100.37a, 2-22

An appraisal on an uncomplicated acquisition, permitted at the option of the sponsors, and where adequate market data are available, may be prepared on an abbreviated appraisal format (short form appraisal) when the value conclusion is adequately related to comparable sales. Any format such as the Fannie Mae, Uniform Residential Appraisal Report (URAR), or Uniform Commercial and Industrial Appraisal Report (UCIAR) are in common use, and are acceptable. Examples of an uncomplicated acquisition would be:

- A totally acquired property with a single-family residence.
- A totally acquired property of unimproved residential, commercial, or industrial lots, or other vacant land.
- A strip or other partial acquisition not involving benefits or damages to the remaining property other than minor replacement or reestablishment items measurable by the cost-to-cure, such as reconnections or other minor replacement of walks, steps, drives, fencing, etc.

3. NOMINAL VALUE FINDING/APPRAISAL

FAA 5100.37a, 2-23

An appraisal may not be needed when the valuation problem is uncomplicated, the fair market value is estimated at \$2,500 or less, based on a sales study and review of available data, and the property owner is willing to sign a Waiver of Appraisal (*See Appendix, page 104*). (Under NO circumstances should the negotiator pressure the property owner to waive his rights to an appraisal.) An uncomplicated valuation problem would normally be in instances where the acquisition does not include benefits or damages to the remaining property other than nominal replacement or reestablishment items measurable by the cost-to-cure. The valuator must prepare a value finding as a record of how the value of the parcel was obtained. The valuation data may be recorded on the FAA/BOA form, Value Finding For Low Value Acquisition, (*See Appendix page 103*) or in any other format that contains the same information.

4. NOMINAL VALUE FOR MULTIPLE PARCELS

When there are numerous, similar, parcels which appear to be eligible for the Nominal Value payments of less than \$2,500, it may be beneficial to

have a few full narrative or short form appraisals (as applicable) made on carefully chosen representative parcels. If those appraisals are, in fact, below \$2,500, a corresponding amount can be assumed for the remainder of the similar parcels. If, however, some of the parcels appear to have a fair market value in excess of \$2,500, an appraisal will be necessary for those parcels. The property owner has a right to have an appraisal made and under NO circumstances should anyone pressure the property owner to waive his right to an appraisal.

5. SPECIALTY APPRAISALS

FAA 5100.37a, 2-24, 2-36

When a separate valuation of machinery, equipment, crops, timber, or other specialty items considered as real property is required, the value of such items may not be arbitrarily added to the valuation of the other realty, but will be considered to the extent of the contributory value in establishing the value of the whole property.

Prior to the preparation of the real estate appraisal, a meeting between the airport representative, the real estate appraiser, and the property owner, may be necessary to establish the inventory of specialty items to be appraised. The list should include items of both real estate and personal property.

A specialty appraisal is a written document which, as a minimum, contains the following:

- Statement of purpose of appraisal
- Identification of the property and its ownership
- Identification of the value problem
- Definition of value(s) reported; i.e., fair market value in place, replacement cost new, salvage value, etc., and the data source for this valuation
- The estimate of value
- The data and analysis to explain, substantiate, and thereby document the estimate of value(s)
- The date(s) on which the estimate of value(s) applies
- Statement of appropriate assumptions and limiting conditions
- The certification, signature, and date of signature of the specialist

- Other descriptive material (maps, charts, plans, photographs, etc.)

In appropriate instances the specialty appraisals may be accomplished by the contract appraiser responsible for the appraisal of the entire parcel. Estimates of value prepared by the specialty appraiser must be made available to all appraisers. The specialty appraisals must be reviewed by a review appraiser or other specialist, as outlined in Chapter II, I, on page 46 of this manual, to determine its acceptability, before distribution to the real estate appraiser.

6. **APPRAISAL OF PROPERTIES WITH HAZARDOUS MATERIALS** *FAA 5100.37a, 2-26*

Clean-up or waste disposal is normally reflected in a property's salability, therefore, generally impacting the market value. In appraising property for airport project purposes, the impact of any hazardous materials affecting the property and the level of treatment needed to control or cleanup the property, is set aside. The appraiser should be requested to appraise the property as if it were free and clear of hazardous materials and as if it had no environmental impairments. The contamination problems will be dealt with in a later step. *(See hazardous materials reference on page 55)*

7. **LIFE ESTATE** *FAA 5100.37a, 2-27 & 3-10*

A life estate or life use reservation permits the property owner(s) an opportunity to reside on the property, in an existing dwelling, for the remainder of their lives. However, special valuation requirements in the value of the life estate instead of full market value are necessary. For life estates, the length of the estate is based on the life expectancy of the occupying property owner. The number of years remaining in the individual's life span can be determined by the use of actuarial tables.

NOTE: A property with a life estate will not become eligible for reimbursement until after the life estate has expired.

C. **UNECONOMIC REMNANTS** *Wis SS 32.05(3m) & FAA 5100.37a, 1-36, 2-5 & 3-8*

When an acquisition involves only a portion of the property, the appraiser must address the issue of severance damage, if any, to the remainder, including reasoning and sales data to support the conclusion. The before and after method of the full narrative appraisal is expected to be used. If the situation is such that the remainder may be an uneconomic remnant, the appraiser should so indicate.

The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property,

and which the acquiring sponsor has determined has little or no value or utility to the owner, due to size, shape, or condition. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the sponsor **must** offer to acquire the remnant. The uneconomic remnant may be acquired by purchase or by condemnation, if the owner consents.

The property owner may believe that he is going to be left with an uneconomic remnant, even though the appraiser and the sponsor do not believe that is the case. The property owner can present his reasoning and the documentation to substantiate that belief. It is the responsibility of the sponsor to make the decision whether to buy the part in question. If the remnant is not purchased and the owner still feels it should be, the property owner has the option to file a suit for inverse condemnation. Inverse condemnation is the process by which a property owner brings suit against the sponsor to prove that compensable property rights have been taken without the payment of just compensation.

D. APPRAISING AVIGATION AND CLEAR ZONE EASEMENTS

FAA 5100.37a, Ch 2, sec.5

1. AIRSPACE PROTECTION

Airspace is defined as the space in the air above the surface of the land, or a particular portion of such space, as needed to protect the aerial approach to the airport and usually defined by the boundaries of an area on the surface projected upward. The airspace most in need of protection is what is known as the approach surface; an area which slopes upward and outward from the end of the runways. (Sort of like a child's slide, that is wide at the top and narrows at the bottom, it serves to guide airplanes to the approach end of the runway for a landing.) The Airport Layout Plan depicts the existing and ultimate approach configurations, height and slope protection required, location and elevation of obstructions to safe air navigation as identified by these imaginary surfaces and other airspace needs of the airport. In some cases this airspace can be sufficiently protected with Avigation and Clear Zone Easements.

2. DESCRIPTION OF EASEMENTS.

Avigation Easements and Clear Zone Easements are conveyances of a specified property interest that create an encumbrance on a particular land area that restricts some uses by the owner of the property. It is imperative that the appraisal reflects the specific easement interest proposed for acquisition.

a. Avigation Easement

The right-of-flight is the essence of an Avigation Easement. Other

rights included, in addition to the right-of-flight of aircraft, may consist of; the right to cause noise, vibrations, fumes, dust, and fuel particles etc.; height of objects (trees, towers, buildings, etc.) which may protrude into the approach surfaces; the right to remove, mark or light all objects protruding into the airspace, together with the right to prohibit future obstructions in the airspace; and the right of ingress/egress on the land to exercise the rights acquired. An Avigation Easement can prohibit the property owner from creating electrical interference or radio communication interference between the airport and the aircraft; making it difficult for flyers to distinguish between airport lights and others; causing glare in the eyes of flyers using the airport; or to impair the visibility in the vicinity of the airport; or in any way to endanger the landing, taking off or maneuvering of aircraft. The easement may also contain any number of additional restrictions, as the sponsor deems necessary, such as Non-Suit Covenants.

b. Clear Zone Easements

The areas controlled by a Clear Zone Easement must be, and must remain, cleared of any buildings, structures, objects (other than air navigation facilities), growths (vegetation, such as trees), or assemblies of persons. Generally, it is permissible to allow the property owners to reserve the right to use the land for farming purposes, including pasturage, fencing, growing of low-growth crops, storing of farm crops and to bring farm machinery on the land temporarily, as necessary to carry out farming operations.

NOTE: Clear Zone Easements alone, provide only for protection from obstruction and do not include right-of-flight and will not protect an airport owner from future claims from property owners due to over flights. **It is imperative to obtain an Avigation Easement with all Clear Zone Easements, such as the combined ‘Clear Zone and Avigation Easement’ in the appendix.** (*Clear Zone and Avigation Easement page 107.*)

3. PREPARING THE EASEMENT APPRAISAL

An appraisal must be prepared by the “before and after” method except in those cases where the value is nominal and there is little, if any, damage to the property affected, in which case, a nominal value appraisal may be prepared. The appraisal must reflect the restrictive elements of the easement to be acquired and the effect of such elements on the highest and best use. Full details with respect to any interference with the highest and best use of the property must be developed and explained, including the reasoning of the appraiser where sufficient sales data is not available. This

is particularly important where it is concluded that damages, due to imposition of the easement, will occur. Detailed plans and drawings prepared from engineering surveys will provide data on the imposition of the height restrictions over the property. Explanation by the appraiser on the effect of the height limitation restrictions must include complete consideration of all potential property uses.

a. Before and after value required

Erroneous or improper consideration in the before and after values can lead to an erroneous conclusion of the value of the easement. The before and after technique must be employed with the easement being appraised by the same principles and approaches to value as any other type of acquisition.

(1) Before Value.

The appraiser must develop the present use and the potential highest and best use of the property unaffected by the easement. An analysis must be made on all economic data, as well as the market transactions that occur, giving consideration to all factors and conditions that will lead to a justified and well thought out opinion of the highest and best use. The appraiser also has to carefully consider the landowner's vertical area of effective possession, as it relates to highest and best use. This area may be difficult to definitively prescribe since the limit will vary according to the adaptability of the land, current or eminent zoning changes, and the location.

(2) After Value.

The appraiser must reconsider the highest and best use of the property following the imposition of the easement restrictions. Clearances of the airspace over the property and over any improvements must be determined.

- In many instances, it may be concluded that, although the highest and best use may not have changed, there may be a limitation on the use. This must be rigorously explored, for often, this will be the major determination in arriving at the easement value.
- Typically aviation easements do not prohibit development or construction of improvements on the property; however, the easement must prohibit

protrusion of structures into the imaginary surfaces. This will limit future uses of the property, by virtue of the height limitations.

- Temporary interference with the use of property should be examined in light of the extent of actual interference. Care must be exercised to choose between an actual interference in use, versus, speculative damages in the mind of the property owner. It is important to document what use or uses are permitted, as measured against the considered highest and best use.

b. Appraisal documentation

Sales are difficult to locate and include differences in the easement interest that make comparison difficult. Types of comparables to consider are:

- Sales of similar property with aviation easements when compared directly with the subject property.
- Sales of easement encumbered properties adjacent to a comparison airport to analyze the influence of those easements on affected properties at that site. This analysis can then be related to the properties currently being encumbered with easements at the subject airport. Although sales near different airports may involve variations in airport type, size, and use, all available sales data should be investigated, included in the appraisal, evaluated by the appraiser, and either assigned appropriate weight or disregarded.
- Sales subject to easements similar to the aviation easement interest. Other easements such as clearance, scenic, restrictive, power line, and air rights often contain features found in an aviation easement. These should be considered, if only as a guide, in the valuation of the aviation easement.
- When in noise impacted areas, sales encumbered with an aviation easement that are in the same neighborhood area as the subject property. Sales used as comparison properties in the valuation process should have sold in the same time period as when the property owner purchased the

subject property taking into consideration the possible reduced purchase price in the impacted area as well as other market conditions influencing property value. This will ensure that the property owner will be reimbursed only for the diminution of value that may have occurred during his or her ownership of the property.

When there are no comparable sales within the same general neighborhood area, the appraiser may expand the area of sales consideration; however, appropriate adjustments must be made to the comparable sale to reflect the value difference that may be brought about by the noise impact. When a residential dwelling has received acoustical treatment, the contributory value of such treatment as reflected in the overall value of the subject property must be considered in the easement valuation.

- When sales with aviation easements or similar restrictive easements are unable to be located, the appraiser is limited to applying the method most subject to question - the appraiser's opinion. If only opinion is relied upon for the value estimate, the appraiser must develop the analysis and theoretical argument that supports the opinion on the effect the aviation easement will have on the continued use and enjoyment of the property.

c. Factors influencing valuation

To be compensable, the cause of any diminution in value must be measurable and not merely assumed or imaginary. The effect must be of sufficient intensity to cause personal discomfort that affects enjoyment of the use of the land and as a consequence the marketability of the real estate.

- The appraiser must evaluate the market appeal or competitiveness of the noise impacted property, versus other substitute properties in its market.
- Noise as an adverse environmental condition on market value may be a significant factor and must not be ignored. Reference to existing and future noise contours, when available, will give the appraiser the necessary information to assist in the formulation of an opinion as they provide an estimate of aircraft noise impact over the area. There must, however, be a showing of a measurable or provable decline

in property value traceable to the noise interference. Where noise contours are not available or where noise may not be a major factor, daily aircraft operations, both existing and forecasted, can be obtained. This data is useful in establishing the volume of air traffic as it affects properties, both today and in the future.

- A property's proximity to air pollution from aircraft emissions, although substantially reduced in recent years, cannot be overlooked and should be considered by the appraiser in the value considerations.
- The effects of airport lights, such as beacons, should be evaluated.
- The easement document should be completely examined to determine the restrictions and limitations being placed on the property and assess the effect on its highest and best use. Each easement element should be listed and explored to the extent necessary. Care must be taken to establish that the limitation is a deterrent to the use of the property.

d. Easement restrictions

Some typical restrictions that may be included in an easement are:

- Right to restrict or prohibit radio or electromagnetic interference. On commercial property, this restriction may affect the highest and best use and value; however, little or no effect should occur to agricultural land.
- Right to restrict or prohibit construction of certain types of buildings or structures. This restriction may severely limit the use of land intended for certain development. On the other hand, the land use zoning ordinance may already have placed restrictions on the physical development, in which case the net effect of the easement restriction must be isolated.
- Right to restrict or prohibit lights, lighted signs, and other lighted objects which could distract or temporarily blind pilots.
- Right to restrict or prohibit hazardous or unreasonably objectionable smoke, fumes, or vapor.

- Right to control the maintenance of any structure, including temporary interference with any of the acquired surfaces.
- Right to restrict or prohibit specific agricultural uses such as growth and harvesting of timber, establishment of orchards or other plant growth that may eventually penetrate imaginary surfaces.
- Right to restrict or prohibit specific agricultural uses; construction of ponds, lakes or other water impoundment; sanitary landfills or other manmade improvements that may attract or result in the concentration of birds and/or waterfowl.

e. Compensation for easement interest only

The appraiser must limit the estimate of just compensation to the easement interest described.

- Damages must be excluded for possible violations of flight regulations and flight patterns that are purely speculative. Where the flight patterns or approaches are violated, liability of damage due to trespass or violation of flight regulations is based upon laws applicable in torts. The individual landowner may have some remedy for flight violations in another form of action, but such damages are not appropriate in acquisitions in eminent domain.
- Inclusion of damages, real or fanciful, for danger and fear of injury from aircraft also is not proper. It is impossible to assign values to such speculative items as mental anguish and lost sleep.
- If the appraiser can find no loss of value, that finding must be reported. However, payment of nominal amounts in negotiated settlements for such acquisitions is an administrative determination and should so remain.

f. Other existing easements

A precaution to be observed in the appraisal process concerns previous easements or restrictions that may have been imposed. These must be taken into consideration. However, the amounts paid for these interests should not necessarily be automatically

subtracted from the estimated value of the avigation easement since the previously acquired interests may have included physical clearing or involved negotiated settlements bearing no relation to market value. Appraisers should also reject the theory that the mere existence of an easement constitutes an encumbrance on the title which implies a token damage. Many properties are subject to easements such as water, sewer, or power and yet readily sell on the market with no apparent consideration given to the easements.

g. Each easement appraised

An appraisal must be prepared on all avigation easements that are being acquired. Even though no apparent value exists for the easement or a loss in value appears minimal, the appraisal process and documentation must still be completed. To do otherwise does not reflect equal treatment and also risks omission of potential damage elements not observable without a complete appraisal.

h. No formula or rule basis

Application of the appraisal process to the valuation of an avigation easement cannot be reduced to a mere mechanical formula or rule of thumb. The appraiser should never attempt to create a percentage or formula adjustment to reach a subsequent valuation by the use of averages, median, or means produced by a totality of available data. The use of mathematical formulas, although useful in categorizing information and appearing very authoritative, is outside the realm of real estate appraisal principle and theory. Such methods presuppose a loss in value without regard to highest and best use and are a substitution of the appraiser's judgment for that revealed in the action of buyers and sellers. In the final analysis, a proper and accurate estimate of value will rely on the individual appraiser's knowledge of market influences. The quality of the report will be determined through sound, logical explanation and correlation of that knowledge.

E. NUMBER OF APPRAISALS

FAA 5100.37a, 2-25

The sponsor must secure at least one appraisal or value finding for each parcel to be acquired in fee title, or for any lesser property interest being acquired from the property owner. The number of appraisals to be prepared for each parcel will be determined by the sponsor depending upon the complexity of the appraisal problem.

If otherwise eligible, state and federal participation will be allowed for the cost of

one appraisal or one value finding on parcels valued at \$2,500 or less; in the cost of two appraisals on parcels valued in excess of \$2,500 when the properties are of a complex or unusual nature; and in the cost of up to two additional appraisals in condemnation cases when litigation is imminent and deemed necessary by the sponsor.

F. CHOOSING AN APPRAISER

FAA AC150-5100-14C, BOA-PPM 308-2-1

Unless the cost of appraisal services could be in excess of \$25,000 it is not necessary to advertise for an appraiser. Three or more appraisers should be contacted for consideration. They should be provided with the scope of work to be done and asked to indicate if they are interested in providing service. The positive responses should be ranked and negotiations for a contract begun with the best qualified person. The BOA maintains a list of qualified appraisers.

1. QUALIFICATIONS

- Appraisers should hold a valid Wisconsin Certified General Appraisal license.
- They should be experienced in the type of property they are being employed to appraise.
- The appraiser should have experience in eminent domain valuation for both total and partial acquisition and be knowledgeable of, and available for, appearances in court in the event there is litigation.
- The appraiser may have no personal interest, present or prospective, in the property being appraised.

Note: It is recommended that the most knowledgeable appraiser available, preferably one who has done work with eminent domain, condemnation, litigation, trial and expert testimony, be hired. They may be somewhat more expensive to begin with, but they will be your defense in court if there is future litigation. Special diligence in choosing an appraiser is encouraged when the appraisal is expected to be unusually difficult, such as Aviation Easements. In many cases the choice of an appraiser is not given the consideration it deserves because there is, at this time, a “willing seller and a willing buyer.” Do not be lulled into thinking there will be no problems because of this fact.

2. FEES

- The amount of the fee will represent a fair payment for the services performed whether it be for initial valuation, a new valuation

occasioned by a change in the acquisition, or a subsequent updating requested by the sponsor.

- The appraiser will visit the project site to identify the appraisal problem and estimate the fee per parcel taking into account the complexity of the appraisal, number of parcels in the project, the locations, the amount of information and data provided to the appraiser by the sponsor, the amount of information yet to be developed, and the time allowed for the appraisals.
- Additional factors to consider when determining the payment of appraisal fees are:
 - ☞ Each parcel's appraisal fee should be computed separately and not just an average of the total project.
 - ☞ A separate provision for a per diem rate to be paid for court appearances and preparation for court.
 - ☞ There will be no compensation for corrections or revisions required because of the appraiser's failure to comply with contract specifications and standards in the agreement.
 - ☞ Fees may not be determined as a percentage of the appraised value.

G. CONTRACTING WITH APPRAISER

The contract with the appraiser should contain, as a minimum, the following provisions and clauses:

- Date of agreement.
- The complete names and addresses of each party. When the contract is with a partnership, firm or corporation, the agreement should identify the person who will perform the valuation services and, if necessary, testify in a condemnation action.
- Description of the work to be done in sufficient detail to show the nature and extent of the services contemplated.
- Provision for the appraiser to testify in court if the need arises.
- Specification as to the content, format of appraisal(s), and approaches to value to be included in the real estate appraisal.

- Data to be furnished by the sponsor.
- Date completed appraisal(s) is due.
- The basis of payment for the services to be furnished.
- The following clause: “The appraiser warrants that there has not been any company or person employed or retained, other than a bona fide employee working solely for the appraiser, to solicit or secure this agreement, and that payment or an agreement has not been made to pay any company, firm or person, other than a bona fide employee working solely for the appraiser, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this agreement. For breach or violation of this warranty, the (airport owner) will have the right to annul this agreement without liability.”
- Provisions that would permit the negotiation for mutual acceptance or major changes in the scope, character, or estimated total cost of the work to be performed if such changes become necessary as the work progresses.
- Provision that would permit termination of the agreement by the sponsor in case the appraiser is not complying with the terms of the agreement, the progress or quality of work is unsatisfactory, or for other reasons.
- Provision covering the ownership by the airport of work completed or partially completed and basis of payment thereof in the event of termination of the agreement by the sponsor.
- An express prohibition against the subcontracting or transfer of any of the work except as is otherwise provided for in the agreement.
- Instructions that the appraiser is to follow accepted appraisal principles and techniques in the valuation of real property in accordance with existing state law.
- Provision for itemizing the fee per parcel within the agreement or by a separate statement.
- Provision for updating appraisal(s) at the request of the sponsor.
- Provision for execution of a certification statement containing provisions in FAA/BOA Certification by Appraiser. (*See Appendix page 93*)
- Clauses pertaining to access to record, retention of records, and legal

remedies for breach of contract.

- Pertinent Civil Rights assurances.
- Pertinent Disadvantaged Business Enterprise assurance
- Properly executed signatures and dates.

H. APPRAISAL PROCESS

Wis. ss 32.05

- On all but very uncomplicated or nominal value parcels, a full narrative appraisal should be done.
- If the appraisal is for easements or only part of the property is being acquired, the appraiser must develop the severance damage, if any, to the remainder using the before and after method of appraisal. (*See Uneconomic Remnant pages 52.*)
- The law requires the appraiser to personally inspect the property, confer with the owner or the owner's representative, if reasonably possible, and offer the property owner the opportunity to accompany the appraiser during the property inspection.
- Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project, nor reap a windfall at public expense, because of increased value created by the proposed project. The appraiser, in determining the compensation for the property, must disregard any decrease or increase in the fair market value of real property prior to date of valuation, caused by the public project for which such property is being acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the property owner.
- The appraiser must be informed that any allowance for relocation assistance payments are prohibited from being considered or included in the real property evaluation.
- The appraisal must include a copy of the appraiser's certification which includes language that the property owner was given the opportunity to accompany the appraiser on the property inspection. *FAA 5100.37a, 2-8 (See Appendix page 93.)*
- Any and all appraisals made, must, after reviews and corrections (if needed), be provided to the property owner. *Wis SS 32.05(2)(b)*

I. APPRAISAL REVIEW

FAA 5100.37a, ch. 2, sec. 4, 2-31 to 2-36

- An appraisal review is the culmination of the appraisal process. The intent of the review is to ensure an adequate appraisal and the estimate of just compensation for the proposed acquisitions. The review appraiser may not be the same person who made the appraisal. A contract agreement must be executed for a review appraiser.
- All appraisals must be reviewed by a review appraiser, a Wisconsin Certified General Appraiser, who will examine them to ascertain that they meet the appraisal requirements as specified by law, follow accepted appraisal principles and techniques for the valuation of real property, and will, prior to acceptance, secure necessary corrections or revisions.
- If there is a wide divergence in appraised values or another reason to question the veracity of the appraisal(s) the review appraiser will field inspect the property appraised and the comparable sales considered by the appraiser(s) in arriving at either or both, as appropriate, the fair market value of the whole property and of the remainders. If a field inspection is not made, the file must contain the reason that such inspection was not made.
- In no instance may the approved just compensation be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The review appraiser must consider all pertinent value information that is available and then will make a recommendation of a single conclusion of value. The reviewer may not utilize a “range” of values.
- If the review appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, the review appraiser must make that information known to the sponsor.
- The review appraiser’s signed and dated statement must include:
 - ☞ The estimate of just compensation including, where appropriate, separate allocations of tenant’s interests, damages or benefits to remainders, and any differences noted between the reviewer’s and the appraiser’s lists of improvements and allocations.
 - ☞ Whether there was a field inspection and if not, why not.
 - ☞ A statement that the reviewer has no direct or indirect, present or

contemplated, future personal interest in such property, or in any monetary benefit from its acquisition.



That the estimate of just compensation has been reached independently, without collaboration or direction, and is based on approved appraisal and other factual data.

J. PURCHASE PRICE APPROVAL

Once the appraisal and review are completed the sponsor needs to look at all the information that has been gathered, to set the sponsor approved purchase price.

1. ESTIMATE OF JUST COMPENSATION

The appraisal reviewer's recommendation of just compensation is the starting point. Just compensation is the amount paid to a property owner in a condemnation action. The theory is that in order to be "just", the property owner should be no richer or poorer than before the taking.

2. IMPACT OF HAZARDOUS MATERIALS/COST TO CLEAN UP.

In those cases where immediate cleanup will be required, the actual market value may simply be the value as if free and clear, less the cost of cleanup.

3. UNECONOMIC REMNANT

If it appears that there may be an uneconomic remnant, a decision must be made before the initial offer whether to offer on the whole parcel or only the required part. An alternate offering price which includes any uneconomic remnants should be prepared if it is decided that there is, in fact, potential to leave the owner with an uneconomic remnant.

4. EASEMENT VS. FEE

There are cases where there are no clear cut reasons whether to buy a parcel in fee or to purchase an easement. A choice has to be made where to start with the initial offer. If the property owner has strong feelings one way or the other, the negotiations will develop that way.

When all the options have been explored, and an offering price determined, a statement by the appraiser, detailing the reasoning used to decide the "Recommended Purchase Price", should be written, signed and retained in the file.

K. INITIAL OFFER

After review and approval by the sponsor, an offer can be made to the property owner, based on the acquiring sponsor's approved Recommended Purchase Price. The amount may be not less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. This is dealt with in more detail in Chapter IV.

L. OWNER'S APPRAISAL

Wis. SS 32.05 (2) (b)

At the time the initial offers are presented to the property owners, they must be informed of their rights, one of which is to have their own appraisal done, by an appraiser of their choice, and to have the cost reimbursed by the sponsor.

- The property owner is entitled to their own full narrative appraisal made by a similarly qualified appraiser.
- If the property owner wishes to be reimbursed for the cost of this appraisal, it must (by statute) be submitted to the acquiring sponsor within 60 days after receiving the sponsor's offer & appraisal. The reasonable cost of this appraisal, if the appraisal meets the standard set forth in Chapter 32 of the Wisconsin statutes, must be paid by the sponsor.
- Appraisal guidelines for the property owners and their appraisers are included in the appendix. *(See Appendix page 86.)*
- The owner's appraisal should also be reviewed by the review appraiser.

M. RECONCILIATION

All appraisals on a parcel of land, including the owner's appraisals, should be reviewed by the same review appraiser. The review appraiser must consider all pertinent value information that is available and then will make a recommendation of a single conclusion of value. The reviewer may not utilize a "range" of values. If there is a wide disparity between the existing appraisals, when the properties are of a complex or unusual nature or when litigation is imminent, the sponsor may deem it necessary to have another appraisal made. The review appraiser may do this 'reconciliation appraisal' or the sponsor may contract with yet another appraiser.

The review appraiser must submit the conclusion of value to the sponsor and the negotiator.

III. RELOCATION ASSISTANCE

An agency with the power to condemn must make fair and reasonable relocation payments to displaced persons, business concerns and farm operations. Due to the complex nature of relocation law, this manual does not provide guidance and procedures to be followed by sponsors when relocation is necessary. It is advisable to hire a consultant to handle this aspect of the acquisitions if the sponsor does not have skilled relocation staff.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, became effective on the date of its enactment, January 2, 1971, and remained unchanged until it was amended on April 2, 1987. The final rule, 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federally and Federally Assisted Programs, established a government wide single rule for the implementation of statutory amendments to the Uniform Act. **Provisions of the Uniform Act are mandatory** and are applicable to all acquisitions anticipating future state or federal funding. The provisions apply to all agencies that administer programs or provide financial assistance for projects which involve land acquisition and relocation assistance, **regardless of whether the acquisition of the real property is included in the project as a project cost item.** Department of Commerce, Chapter **COMM 202** contains the implementation regulations for Wisconsin Statutes **32.185 to 32.27**, for establishing minimum standards for relocation for Wisconsin properties.

Both the federal and state laws apply to all state and federally assisted projects.

Note:

Wisconsin relocation laws are more restrictive than the federal laws in many areas.

IV. ACQUISITION & NEGOTIATION STANDARDS

FAA 5100.37A, Ch. 3, & WTS SS 32.05(2a)

A. GENERAL NEGOTIATION STANDARDS

Acquisition by negotiation is the process in which the sponsor makes every reasonable effort to acquire real property by mutual agreement rather than condemnation action. The sponsor's negotiator must present and discuss the offer to purchase with the property owner or their representative, including all relevant terms and conditions, and then summarize the basis for the amount of the offer. The offer should not be regarded, presented or explained as an inflexible one-price procedure. The discussions are to be conducted from the viewpoint of two parties seeking agreement as to fair compensation and not on a "take it or leave it" basis. The property owner must be given reasonable opportunity to present factual material which he or she believes to be relevant to the question of value and to suggest modification in the proposed terms and conditions of the purchase, with the sponsor carefully considering the property owner's presentation and suggestions.

On the other hand, the sponsor's negotiation policy should make clear to the property owner that the offer is the full amount determined to be just compensation for the property and represents the airport's best offer. The offer of compensation will not be changed unless evidence that the price is not sound, is furnished by the property owner or otherwise determined by the sponsor.

Offers initiated by property owners to sell their land will be processed in the same manner as any other property to be acquired.

When acquiring any interest in land, the sponsor must offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the land to be acquired, which it requires to be removed or which it determines will be adversely affected by the acquisition. This must include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

B. NEGOTIATOR

Negotiation may be conducted by qualified personnel employed by the sponsor, by BOA real estate agents acting as agent for the sponsor, or by qualified private individuals and firms employed for the purpose of negotiations. The employment of fee negotiators must be by written contract. The amount of fee must be established on a parcel basis and not determined on a percentage of fair market value or acquisition price.

C. NEGOTIATION POLICY

Negotiation policy, when acquiring real property for a federally or state assisted, funded or potentially reimbursed, airport project is as follows:

- Every reasonable effort will be made to acquire real property by negotiated purchase.
- The sponsor may not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.
- The negotiator must make a prompt offer to purchase the property to be acquired, for the full amount of the approved just compensation.
- The sponsor must provide the property owner with a copy of the appraisal upon which the offer is based and a copy of any other appraisal on this property made for the project.
- If improvements or fixtures are being separately acquired and the owner of the land involved disclaims all interest in the improvements of the tenant, a separate written offer will be provided to the tenant.
- The full amount of the approved just compensation will be paid to the property owner, or will be made available by deposit in court, or otherwise made available prior to the sponsor taking physical possession of the property or requiring that the property be vacated by the property owner.
- No person occupying real property may be required to move from a dwelling or move his or her business or farm without at least 90 days written notice from the sponsor of the intended vacation date.
- A displaced person or business must have rent-free occupancy of the acquired property for a period of 30 days, commencing with the 1st or 15th day of the month after title vests in the sponsor, whichever is sooner.
- The sponsor may not require the persons who occupied the premises on the date that title vested in the sponsor to vacate until a comparable replacement property is made available.

D. DEPT. OF COMMERCE BROCHURES

Wis. SS 32.05(2a) & 32.25(6)

Prior to any negotiations, the sponsor must provide the property owner with a copy of the applicable pamphlets prepared by the Department of Commerce (DOC) in cooperation with the Attorney General. (Ideally the property owners

received the pamphlets at the initial contact.) These pamphlets, written in simple language and in readable format, describe the eminent domain laws of Wisconsin, including the reasons for condemnation, the procedures followed by condemnors, how citizens may influence the condemnation process, and the rights of property owners and citizens affected by condemnation. The pamphlets, available from DOC or the Bureau of Aeronautics are:

- The Rights of Landowners Under Eminent Domain Law
- Wisconsin Relocation Rights - Residential
- Wisconsin Relocation Rights - Business, Farm and Non Profit Organizations

E. INITIATION OF NEGOTIATION

FAA 5100.37a 3-5, Wis. SS 32.05, DOT Highway Manual

The initial offer to purchase real property will be in the following manner:

- At the first personal contact where price is discussed, the negotiator will offer the property owner, in writing, the full amount of the established just compensation, which may not be less than the approved appraisal. This first offer should be within 30 days of the establishment of just compensation.
- The property owner should, at this initial meeting, be given:
 - ☞ a copy of all appraisals made on the property.
 - ☞ the DOC brochures if they haven't been given prior to this time.
 - ☞ a map (the Exhibit "A") showing all property affected by the project and the names of all, or, at least 10 neighboring landowners to whom offers are being made.
 - ☞ a copy of the "Appraisal Guidelines" (*See Appendix page 86*) including an explanation that the owner is entitled to obtain their own appraisal by a qualified appraiser. The negotiator should make the property owner aware that the sponsor will pay the reasonable cost of the appraisal if it is completed according to the appraisal guidelines and submitted to the sponsor within 60 days after the owner receives the sponsor's appraisal and offer.
- The written offer must be signed, dated, and contain, as the basis for the amount established as just compensation:

- 👍 legal description and location
 - 👍 the interest to be acquired (fee or easement and area).
 - 👍 inventory of improvements, owners of same, and what is included in the appraised value.
 - 👍 amount of offer and a statement that the amount is believed to be just compensation and not less than the appraised fair market value of the property
 - 👍 a statement that the just compensation is based on inspection of the property and an appraisal by an independent, competent, qualified real estate appraiser.
 - 👍 the definition of “fair market value”.
 - 👍 the basis and appraisal documentation for the determination of just compensation for partial acquisitions showing, where applicable, the “before and after” allocations and any damages to the remainder.
 - 👍 a statement that any increase or decrease in the fair market value of the real property to be acquired, due to the project for which it is being acquired, has been disregarded by the sponsor and its appraisers in making their estimates of the fair market value of such property.
 - 👍 a statement that the appraisals and determination do not reflect any consideration of or allowance for any relocation assistance and payments which the owner is entitled to receive.
 - 👍 a statement that lists the items excluded from the offer to the fee owner if there are separately held interests in the real property, such as; easements, leaseholds, tenant owned improvements, life estates, and water, gas, oil, or mineral rights.
- If the compensation for the acquisition is \$600.00 or over, the negotiator must advise the property owner that Internal Revenue Service regulations require that the transaction be reported by the use of IRS Form 1099-S. The negotiator must also advise the property owner that in order to comply with IRS regulations, IRS Form W-9 must also be completed. The negotiator should attempt to get the W-9 form completed at the first negotiation meeting, If negotiations are by mail, appropriate written notification must be made. The negotiator must inform the property owner

of his/her obligations to fulfill these IRS requirements. The property owner faces civil and criminal law suit for failing to comply with this requirement.

F. NEGOTIATION CONTACTS

FAA 5100.37a 3-5, Wis. SS 32.05, Highway Manual

Each property owner must be contacted in the following manner:

- The negotiator will personally contact each resident property owner, or property owner's representative, and discuss the offer to purchase the property, including the basis for the offer of just compensation. The negotiator will also explain acquisition policies and procedures, including payment of incidental expenses in accordance with the information on page 62. The mere sending of an offer letter to a resident property owner is not sufficient to meet the personal contact provisions unless all reasonable efforts have been expended in the attempt to arrange a personal meeting.
- A nonresident property owner may be contacted as above, or the sponsor's negotiator may initially contact the property owner by certified (or registered) first class mail. The future course for negotiations must be developed in a reasonable manner which is acceptable to both parties. Such letters must embody, to the extent possible, the same information that would be presented in a personal contact. If contacts are made by telephone, the essential points of the conversation should be recorded in the negotiation diary.
- If relocation will be involved, relocation assistance services should be offered and fully explained at the time of the offer or within two weeks thereafter. *(See page 46)*
- The property owner must be given reasonable opportunity to consider the offer and present evidence which the owner believes relevant to determining the value of the property and to suggest modification to the proposed terms and conditions of the purchase.
- It is recommended that any agreement for sale which is above the approved offer, or involves special commitments be in writing. This agreement is subject to approval and must be handled as an Administrative Settlement which is detailed on page 34. *(See Appendix page 85 for a copy of the form)*

G. OWNER RETENTION

FAA 5100.37a 3-6

Except in areas where relocation of buildings would not be feasible or consistent with planned development, the owner of improvements or appurtenances on lands

being acquired will be allowed the option of retaining (buying back from the airport) such improvements or appurtenances at a retention (salvage) value determined by the sponsor. This determination should normally be made prior to the start of negotiations. The retention value of any improvements retained by the property owner generally would be netted out from the property settlement amount at the time of closing.

H. TENANT-OWNED IMPROVEMENTS

FAA 5100.37a 3-7

If any improvement owned by tenants has to be removed, or if it will be adversely affected by the project, the sponsor must offer to acquire an interest at least equal to the acquired underlying land.

- Any building, structure or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, must be considered to be real property for purposes of acquisition.
- Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater.
- No payment may be made to a tenant-owner for any real property improvement unless:
 - 👉 The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the sponsor all of the tenant-owner's right, title, and interest in the improvements; and
 - 👉 The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
 - 👉 The payment does not result in the duplication of any compensation otherwise authorized by law.
- Nothing shall be construed to deprive the tenant-owner of any right to reject payment under this paragraph, and to obtain payment for such property interests in accordance with other applicable law.

I. UNECONOMIC REMNANT

WT ss 32.05 (3m), FAA 5100.37a, 3-8a & b

An uneconomic remnant means the property remaining after a partial taking of property, if the property remaining is of such size, shape or condition as to be of little value or substantially impaired economic viability to the owner. The size or

fair market value of the parcel is not to be considered as the basic criteria for a determination of “uneconomic.” Rather, if such parcel would have little or no utility or value to the owner, the parcel is to be considered an “uneconomic remnant.”

If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the sponsor must offer to acquire the remnant concurrently and may acquire it by purchase or by condemnation if the owner consents. If acquisition of a parcel with an uneconomic remnant cannot be settled by negotiations the sponsor is not obligated to acquire the remnant property through condemnation. However, if the sponsor and the property owner desire to have the uneconomic remnant acquired, and the public necessity for the remnant acquisition will not be challenged in the condemnation proceeding, then the uneconomic remnant may be included in the condemnation action as a whole taking.

Land acquired in excess of airport needs may be disposed of immediately if it has not been included on the ALP or the Exhibit “A”. The net proceeds from the sale of excess land must be deducted from the purchase amount of the total parcel to arrive at the amount potentially reimbursable. If the sponsor elects to retain the excess land for nonaeronautical purposes, the amount attributable to the property would not be eligible for reimbursement. If the property was shown on the ALP or the Exhibit “A” map, a land release from FAA will be required prior to disposal. *FAA Order 5100.38a, 602g, & PPM 5190.6*

J. VOLUNTARY ACQUISITION

Uniform Act (49 CFR 24.101(a)(1), FAA 5100.37a 3-9

If a property meets ALL of the criteria for a voluntary acquisition and there are no tenant occupants involved, it may not be necessary to pay relocation benefits.

1. CRITERIA

An acquisition may only be considered voluntary when ALL of the following criteria and conditions are met:

- No specific site or property **needs** to be acquired. When the sponsor purchases more than one property within a geographic area, all property owners are to be treated similarly.
- The property to be acquired is **not** part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- The property may **not** be contiguous to existing airport property.

- The sponsor will **not** acquire the property in the event negotiations fail to result in an agreement, and the owner is so informed in writing.
- The sponsor will inform the property owner of what it believes to be the fair market value of the property.

2. **OWNER vs. TENANT**

Owner occupants who sell their property for projects meeting the above requirements for voluntary acquisition are not considered to be displaced persons, and are not entitled to relocation assistance and payments. However, tenant occupants of acquired property are considered to be displaced persons and are entitled to relocation assistance and payments.

- The voluntary transactions provisions may be applicable to acquisitions made for noise mitigation projects. Projects, such as purchase assurance and transaction assistance programs, assist willing property owners to sell their property in a noise impacted neighborhood, but there is no necessity to acquire specific properties to accomplish the intended noise mitigation, i.e., the offer to current homeowners of the opportunity to relocate from the designated noise impacted area. Properties that are acquired or are provided transaction assistance under these programs may be reconveyed for continued residential use with an avigation easement reserved to the airport for over flight and associated noise exposure.
- Voluntary acquisition may apply when a property is: offered for sale on the open market, is not within a FAR Part 150 project area designated for purchase and redevelopment by the airport, is not under the threat of eminent domain, is not shown on an airport layout plan as property to be acquired, and the sponsor acquired the property under the willing seller/willing buyer premise.
- Noise mitigation projects which acquire designated residential property for redevelopment into noise compatible land uses, do require the acquisition of all or substantially all of the property in the project area to accomplish the intended noise mitigation. Therefore, acquisitions for these projects may not be considered voluntary transactions. Also, the **voluntary transaction provisions do not apply to these projects, whether or not the sponsor will use its eminent domain authority** to acquire needed property. Owner occupants, as well as tenant occupants, are considered under the Uniform Act to be displaced by these

projects, and are entitled to relocation assistance and payments.

K. PROPERTY CONTAINING HAZARDOUS MATERIALS

(FAA 5100.37a 3-11)

The sponsor, if at all possible, should not acquire property containing hazardous materials until the property owner has cleared or disposed of the materials in compliance with applicable government requirements. Following are measures that the sponsor should take when acquiring a property that is contaminated, and the extent of contamination and cleanup costs have been determined:

- Determine legal responsibility for any identified problem and the required time frame for remediation under state/local regulations. If not done so previously, consultation should be initiated with the appropriate environmental protection agency concerning action required on the contaminated property.
- Consult with and advise the property owner of the identified problem and request that the owner resolve any problems within a specified time.
- If the property owner refuses to initiate mandatory clean-up action, as appropriate and/or in accordance with applicable law or regulation the contaminated property should be referred to the responsible enforcement agency to secure site cleanup.
- If the property owner agrees to a remediation plan, the purchase agreement must include contractual obligation for the control or cleanup to occur at the property owner's expense which complies with applicable requirements and to an agreed cleanup schedule. If the property is purchased prior to the clean up, the sponsor should retain a portion of the acquisition price of the subject property to sufficiently cover the testing and control and/or cleanup costs of the contaminants. After the property has been certified by pertinent government agencies that cleanup or control of the hazardous material contamination has been accomplished to an acceptable level, the net amount of the acquisition price withheld must be paid to the property owner.

L. EXPENSES INCIDENTAL TO TRANSFER OF TITLE

(FAA 5100.37A 3-12 & Wis. SS 32.195)

In addition to the payment for the property and relocation expenses, the sponsor reimburses the owner of real property acquired for a project, for all reasonable, necessary and usual expenses incurred.

Whenever feasible, the sponsor will pay these costs directly so that the property owner will not have to pay such costs and then seek reimbursement at a later date.

If the costs cannot be paid directly, the sponsor will reimburse the property owner for all reasonable expenses necessarily incurred for closing, as soon as practicable, after the date of payment of the purchase price or the date of deposit in the court of the funds to satisfy the award of compensation in a condemnation proceeding, whichever is earlier.

The following expenses may be set forth on the closing statement furnished to the property owner:

- Recording fees, transfer fees, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the sponsor. The sponsor is **not** required to pay costs solely required to perfect the property owner's title to the real property.
- Penalty costs for prepayment of any mortgage, entered into in good faith and encumbering such real property, if the mortgage or land contract was recorded not less than 180 days prior to the initiation of negotiations, as provided by law in s. 32.19(4)(a)2 of the Wisconsin Statutes.
- The pro rata portion of any prepaid real property taxes which are allocable to the period after the sponsor obtains title to the property or effective possession of it, whichever is earlier.

Other costs that may be reimbursed are:

- Increased interest expenses and other debt service cost incurred to finance a replacement property if the acquired property had a bona fide mortgage for not less than 180 days prior to the initiation of negotiations.
- The cost of realigning personal property on the same site in partial takings or where realignment is required by reason of elimination or restriction of existing used rights of access.
- Expenses incurred for plans and specifications specifically designed for the property taken and which are of no value elsewhere because of the taking.
- Reasonable net rental losses where: a) the losses are directly attributable to the public improvement project and b) such losses are shown to exceed the normal rental or vacancy experience for similar properties in the area.
- Cost of fencing reasonably necessary to separate land taken, from the remainder of property owner's land, less the amount allowed for fencing

paid for by the acquisition.

M. RELOCATION ASSISTANCE

The negotiator and the relocation consultant should communicate regularly throughout the acquisition process to coordinate dates for closings, etc., to assist the property owners and provide guidance toward a smooth transfer of title.

N. NEGOTIATION DIARY

FAA 5100.37a, 3-14

The negotiator must maintain adequate records of negotiation on each parcel of property where negotiations for purchase have been initiated. The record must be written in permanent form and completed within a reasonable time after each contact with the property owner. The information should include, but is not limited to, the date and place of contact, persons present, offers made (dollar amounts), counteroffer, reasons settlement could not be reached, and any other pertinent data. Each contact must be independently recorded. The report will be signed and dated by the negotiator.

- When negotiations are successful, a signed statement must be prepared by the negotiator that the written agreement embodies all considerations agreed to between the negotiator and the property owner and that the agreement was reached without coercion of any type.
- When negotiations are unsuccessful, the negotiator must record recommendations for whatever action is considered appropriate along with any additional information essential to further processing of the acquisition.
- Upon completion of negotiations, the negotiation diary records are retained as part of the sponsor's file.

O. OWNER'S APPRAISAL

When property owners exercise their option of obtaining an appraisal, and submit it to the sponsor, it must be given serious consideration. It should be reviewed to judge its merits. It may be decided that the appraisal;

- is inadequate and that the offer will not be changed
- has certain information to warrant an adjustment to the original offer. This may form the basis for an administrative settlement.
- has significant new evidence to warrant an update of the sponsor's

appraisal and/or a new offer.

The property owner's appraisal will be paid for by the sponsor if;

- it is received within the 60 day time limit
- it meets the minimum appraisal standard outlined in the Appraisal Guidelines. (See Appendix page 97)
- the fee submitted by the owner's appraiser is considered reasonable. Should the sponsor determine the fee to be excessive, the owner will be notified and the reasoning behind the decision explained. The file should contain documentation of such notification. Full payment, partial payment or denial of the payment completely, may be considered.

P. RECONCILIATION

It is the responsibility of the review appraiser to study the viability of all the appraisals made on a property, reconcile the differences and make a recommendation of a reasonable amount for the sponsor to offer to the property owner.

Q. ADMINISTRATIVE SETTLEMENT REPORT

FAA 5100.37A, 3-21 to 3-23 & Wis. Highway Manual, sec. 1,D,9

An Administrative Settlement is an agreement to pay a property owner an amount higher than the originally approved offering price. Such settlements by the sponsor must be reasonable, prudent, and in the public interest. Indiscriminate use of the method should not be used, nor is litigation to be avoided only because of the cost of trial or when circumstances indicate otherwise.

1. BASIS

In arriving at a determination to make an administrative settlement, the sponsor should carefully review the parcel file giving full consideration to all pertinent information including:

- The appraiser's opinion of value.
- The property owner's appraisal.
- Inadequacy of appraisal data.
- Just compensation, as recommended by the review appraiser.

- Recent court awards for similar type property.
- The negotiator's recorded information.
- The estimate of trial cost.
- The opinion of legal counsel.
- Extremely complex valuation problems.
- Insignificant variance.

2. DOCUMENTATION

It is important to fully document in writing, the reasoning for an administrative settlement. Written explanation should be adequate enough to explain the judgmental determination and should be consistent with the situation, circumstances, and the amount of money involved. The file will indicate that the approved amount was established prior to any agreement with the owner. There is a sample Administrative Settlement form in the appendix. (*See Appendix page 85*)

Should the settlement include payment of items considered as noncompensable under state or federal law, amounts paid for such items will be established and excluded from a claim for reimbursement.

R. REVISED OFFER LETTER

After studying the review of the owner's appraisal and the reviewer's reconciliation, it may be decided to change the amount of money to be offered to the property owner. An Administrative Settlement Report should be done to document the reasoning for the adjustment. Another offer letter should be drafted, rescinding the old amount and stating the new amount.

S. DONATIONS

Property owners whose real property is to be acquired for an airport project may make a gift or donation of the property, or any part of it, or any of the just compensation amount, to the airport sponsor. A donation may be made at any time during the development of a project or during the acquisition phase of the project. At the time of the donation the property owner must be informed of his or her right to receive just compensation. The sponsor has the obligation to have an appraisal of just compensation done and disclose the amount to the property owner. The sponsor must document in writing the owner's acknowledgment and

waive the right to just compensation. The sponsor is cautioned that prior to accepting a donation, ownership of the property must be verified and adequate title assured, and assurance secured that the property is not subject to hazardous waste contamination and/or clean-up liability that may exceed the value of the property. *FAA 5100.37a, 3-16*

V. CLOSINGS FOR NEGOTIATED SETTLEMENTS

A. PREPARING FOR THE CLOSING

When an agreement has been reached with a property owner, preparations for closing must be made. Some of the things to be done are listed below. It is recommended that the title company that did the preliminary title searches (*See pages 85*) be hired to handle the closing process.

1. SET CLOSING

Set closing and occupancy dates. (Remember: No person occupying real property may be required to move from a dwelling or move his or her business or farm without at least 90 days written notice of the intended vacation date from the condemnor. The displaced person must have rent-free occupancy of the acquired property for a period of 30 days, commencing with the next 1st or 15th day of the month after title vests in the condemnor, whichever is sooner.) *WI ss 32.05(8)*

2. NOTIFY TITLE INSURANCE COMPANY

Notify the title insurance company regarding the closing date and send them copies of the documents so they can update the searches and prepare for closing. (The title insurance company will do most of the preparation for closing for a fee.)

3. CHECK RECORDS

The title insurance company should recheck for special assessments, easements, leases, taxes, delinquent and current, mortgages, new liens, judgments, or other encumbrances. Make sure that there are no encumbrances that will adversely affect the airport.

4. ORDER PAYOFFS

Order payoff statements for mortgages, liens, judgments, taxes, special assessments, work items, and any other items necessary to clear the title.

5. MORTGAGE RELEASES

If only a portion of a property is being acquired (fee or easement) and there is one or more mortgages on the property, mortgage releases must be obtained from each mortgagee.

6. DRAFTING CONVEYANCE DOCUMENTS

WI ss 706.02

A conveyance is a written instrument (the deed or easement), evidencing a transaction by which an interest in land is created or transferred to a new owner. To be valid a conveyance:

- Identifies the parties
- Identifies the land
- Identifies the interest conveyed, and all terms, conditions and contingencies
- Is signed by the grantors; and
- Is delivered.
- Includes the amount of compensation. While not required by statute, it is recommended.
- Conforms to Wisconsin's new (1996) regulations for standardizing documents to be recorded in an office of the Register of Deeds.

IMPORTANT - In addition, Wisconsin statutes provide that owners and any party of interest, even after signing a conveyance, have six months to appeal for greater compensation. The notice of their appeal rights must be handled by adding the following statements to the conveyance. All conveyances **MUST** have the following language:

“Any person named in this conveyance (deed, easement) may make an appeal from the amount of compensation within six months after the date of recording of this conveyance as set forth in ss. 32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on the conveyance shall be treated as the award, and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.”

All persons having an interest of record in the property must be named on the conveyance and must be served with the notice of appeal either by personal service or by certified mail. The following statement should be on the deed; **“Other persons having an interest of record in the property:” followed by their names.**

7. CLOSING STATEMENTS

A closing statement must be prepared. The Title Insurance company will complete the closing statement as part of their closing procedures if requested to do so.

8. TRANSFER RETURN FORMS

The Register of Deeds will require a Wisconsin Real Estate Transfer Return (PE-500) to be submitted with all documents for recording. Except for voluntary acquisitions, as defined in Chapter IV, Acquisition Standards, (*See description on page 53*) there is no fee required with the transfer return. The exemption from the fee is #12, 'pursuant to or in lieu of condemnation.'

9. VOUCHER AND ORDER CHECKS.

Once all the figures are compiled, checks can be vouchered and ordered. It may be convenient to have one check cut to the title company and have them cut the individual checks.

B. AFTER THE CLOSING

1. RECORDING

WI ss 32.05 (2a)

Every conveyance, along with the Transfer Return, should be recorded in the office of the Register of Deeds in the county of the affected land as soon as possible after the closing.

2. COPIES

WI ss 32.05 (2a)

The sponsor must serve upon, or mail by certified mail, to all persons named therein, a copy of the recorded conveyance with the notice of the right to appeal the amount of compensation. (*See appeal language on page 62.*)

3. IRS FORM 1099-S & 1096

IRS Instructions for 1099, FAA 5100.37a 3-13b

The Internal Revenue Service requires a report be prepared concerning any change in ownership of real property. Therefore, acquisition of land or easement interests must be reported to the IRS on a Form 1099-S, Proceeds From Real Estate Transaction. The person responsible for closing the transaction is responsible for the filing. If a negotiated settlement is not reached, and eminent domain is used to acquire the property, the person who coordinates and facilitates the condemnation will be responsible for the IRS forms and filing.

The person responsible for closing the transaction must request the transferor's

Taxpayer Identification Number (TIN) no later than the time of the closing or the issuance of the Jurisdictional Offer. The TIN may be requested on Form W-9, Request For Taxpayer Identification Number. The transferor is required by law to furnish his/her TIN and to certify that the TIN is correct.

Copy B of IRS Form 1099-S should be furnished to the transferor, copy A and Form 1096, Annual Summary and Transmittal of US Information Returns must be submitted to the IRS.

The person responsible for the closing should obtain the current IRS forms and instructions to insure accurate IRS reporting.

C. REIMBURSEMENT OF INCIDENTAL EXPENSES

WI ss 32.195

In addition to the purchase price of the property and all the relocation related expenses, such as relocation payments for moving expenses and replacement housing, business or farm expenses, (*See page 55*) the following types of expenses will be paid by the sponsor or the sponsor will reimburse the property owner.

- Recording fees, transfer taxes, evidence of title, boundary surveys, legal descriptions of the real property and similar expenses necessary to conveying the real property to the sponsor. The sponsor is not required to pay costs solely required to perfect the property owner's title to the real property.
- Penalty costs for prepayment of any mortgage entered into in good faith encumbering such real property if the mortgage is recorded or has been filed for recording as provided by law prior to the date specified in ss. 32.19(4)(a)2 of the Wisconsin Statutes.
- The proportional share of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the sponsor's name or the effective date of possession of such real property by the sponsor, whichever is earlier.
- The cost of realigning personal property on the same site in partial takings or where realignment is required by reason of elimination or restriction of existing use rights of access.
- Expenses incurred for plans and specifications specifically designed for the property taken and which are of no value elsewhere because of the taking.
- Reasonable net rental losses where; a) the losses are directly attributable to the public improvement project and b) such losses are shown to exceed the

normal rental or vacancy experience for similar properties in the area.

- Cost of fencing reasonably necessary to separate land taken, from the remainder of the property owner's land, less the amount allowed for fencing paid for by the acquisition. *See ss 32.195, 32.09(6)(g) and 32.20 of the Wisconsin Statutes.*

VI. EMINENT DOMAIN

WI SS 32.05, FAA 5100.37a, 3-31 to 3-34

A simple definition of eminent domain is: “the power of the government to take property for a public use without the owner’s consent.” The Fifth Amendment to the US Constitution adds; “nor shall private property be taken for public use, without just compensation.”

Wisconsin law is designed to encourage negotiated settlements rather than exercising the power of eminent domain, through the process of condemnation. It does this in two ways; by providing the property owner the opportunity to get a second appraisal, paid by the sponsor, which **must** be considered by the sponsor in the negotiations, and by making it extremely costly for the sponsor to pursue unsuccessful litigation. Condemnation is not a step to be taken lightly.

However, when it becomes apparent that negotiations have reached an impasse, and sufficient time has elapsed for the property owner to make a decision, the sponsor should take the necessary action to proceed with condemnation and complete the land acquisition as quickly as legal proceedings permit.

A. PRE-CONDEMNATION STRATEGY

1. ATTORNEYS

Before taking the final steps into condemnation it is wise to seek legal counsel. Discuss the process and the details of the particular case with the sponsor’s attorney/corporation counsel. If they are not very familiar with eminent domain/condemnation, they should be able to guide you to someone who is more qualified.

2. UPDATE RELOCATION ORDER

Recheck the Relocation Order, which should have been issued and filed with the county clerk in the preliminary stages of this project. If there have been changes to the project, the Relocation Order must be corrected and refiled prior to any condemnations. *(See page 15)*

3. SETTING THE AMOUNT OF COMPENSATION

Section 32.28, Wis. Statutes provides that the condemnor must pay all of the property owner’s litigation expenses if the condemnation commission award or the jury verdict exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15%. The property owner need only beat the lower of the two offers by the required amounts.

For example, if the sponsor issued a jurisdictional offer for \$10,000 and the property owner's appraiser estimated damages at \$25,000, the jury could reach a verdict **as low as \$11,501** and you, as sponsor, would be obligated to pay the cost of litigation for both sides. These costs include attorney, appraisal and engineering fees which could be substantial for a case like this.

Therefore, if there is a substantial dollar difference between the sponsor's offer and the property owner's appraisal or counteroffer, it is important to thoroughly review the relative merits of each side **prior to issuing the jurisdictional offer**. This is the time to put any verbal offer in writing or to make a final written settlement offer. This constitutes the legal basis for determining whether or not the sponsor will be required to pay the property owner's litigation expenses. **We suggest that both, the final written offer and the jurisdictional offer, be in the same amount.**

Persons who could assist in determining a reasonable and defensible final offer include the appraiser, the reviewer, the negotiator and legal counsel. The BOA staff is also available to assist in the decision.

B. JURISDICTIONAL OFFER

WI ss 32.05

The Jurisdictional Offer (J.O.) is the legal document that officially starts the condemnation process. It is a formal written offer which provides a final 20 days for acceptance of the J.O. from the property owner. The J.O. is given by personal service in the manner of service of a circuit court summons, or it may be sent by Certified Mail to all the owner(s), the mortgagee(s) and lien holders of record. The date of mailing is the same as the date of service, and mailing does not extend the time limits.

The owner has 20 days in which to accept the J.O. If such offer is accepted, the transfer of title must be accomplished within 60 days after acceptance, including payment of the consideration stipulated in the offer. If such offer is rejected or if no response is received within the 20 days, the sponsor may proceed to make an Award of Damages.

C. NOTICE OF LIS PENDENS

Wis. ss 32.05(4)

The sponsor must file a Notice of Lis Pendens in the Register of Deeds office, on or within, 14 days of the date of service of the Jurisdictional Offer. A Lis Pendens is a legal notice, filed with the Register of Deeds, which shows pending litigation relating to real property, and giving notice that anyone acquiring an interest in said property, subsequent to the date of the notice, may be bound by the outcome of the litigation. The Lis Pendens must include a copy of the J.O.

D. CONDEMNATION SETTLEMENTS

FAA 5100.37a, 3-32

Negotiations can continue right up until the Award of Damages is recorded with the Register of Deeds.

When a settlement is made in excess of the appraised, established, just compensation amount, the file must contain a signed statement, such as the Administrative Settlement Report (*Appendix page 95*). Refer to the Administrative Settlement Report discussion on page 65, as appropriate, describing the reasons for the settlement with supporting data.

E. AWARD OF DAMAGES

WI s. 32.05(7)(d)

The Award of Damages (also known as Award) is the document which finalizes the condemnation procedure for the taking of private property for public use. The service and recording of which transfers title of the property to the condemnor. The Award of Damages **MUST** have the language discussed on page 68 included.

If the property owner rejects the Jurisdictional Offer or has not accepted the J.O. within the 20 days provided by statute, an Award of Damages should be prepared. Copies of the Award must be served or mailed, by Certified Mail, to each person having an interest of record in the property. The Award, which **must** name all parties having an interest of record in the property, is the official notification that the ownership of the property is transferred to the condemnor, in this case the airport sponsor.

A check, naming all parties of interest as payee, must accompany the owner's copy of the Award or a check payable to the Clerk of Circuit Courts can be deposited with the clerk for the benefit of the persons named. The amount of the check is the amount of the Award, less outstanding delinquent tax liens, special assessments and prorated taxes for the current year.

F. RECORDING THE AWARD

After the Award has been served and after payment has been made, the original Award must be recorded in the office of the Register of Deeds in the county in which the property is located. Thereupon, title to the property described in the Award will vest in the name of the sponsor. The date of the recording is the date the title transfers to the airport sponsor and is also deemed the "date of evaluation" and the "date of taking."

If residences or businesses are involved, the Relocation Agent (consultant) must be informed of the date of recording and the terms of the final settlement.

G. COURT ACTION TO CONTEST RIGHT OF CONDEMNATION

Wis. ss 32.05(5)

Within 40 days of the service of the Jurisdictional Offer, an owner can initiate a lawsuit contesting the sponsor's right to condemn the property described in the J.O. This action is the only manner in which any issue, other than the amount of compensation or proceedings to perfect title, may be raised pertaining to the condemnation. If the action is not commenced within these 40 days the owner is barred from raising any objection, other than the amount of compensation.

H. EVICTION

WI ss 32.05(8)

No person occupying real property may be required to move from a dwelling or move his or her business or farm without at least 90 days' written notice of the intended vacation date from the sponsor/condemnor. The displaced person must have rent-free occupancy of the acquired property for a period of 30 days, commencing with the next 1st or 15th day of the month after title vests in the sponsor/condemnor, whichever is sooner. Any person occupying the property after the date that title vests in the sponsor/condemnor is liable to the sponsor for all waste committed or allowed by the occupants of the lands owned by the sponsor during the occupancy.

The sponsor has the right to possession when the persons who occupied the acquired property vacate, or hold over beyond the vacation date established by the sponsor, whichever is sooner. If the sponsor is denied the right of possession, the sponsor may, upon 48 hours notice to the occupant, apply to the circuit court where the property is located for a writ of assistance to be put in possession. The circuit court will grant the writ of assistance if all jurisdictional requirements have been complied with, the award has been paid or tendered as required, and if the sponsor has made a comparable replacement property available to the occupants. The sponsor **may not** require the persons who occupied the premises on the date that title vested in the sponsor, to vacate until a comparable replacement property is made available.

VII. LITIGATION

WI ss 32.05

A. APPEALS

1. TO CONTEST THE RIGHT TO CONDEMN

- An owner may contest the right of the condemnor to condemn the property described in the Jurisdictional Offer, for a reason other than the amount of compensation. The owner may, within 40 days from the date of service of the J.O. (*See page 67*), commence an action in the circuit court of the county wherein the property is located. Such action is the **only** manner in which any issue other than the amount of just compensation, or other than proceedings to perfect title, may be raised.
- If the action is not commenced within the 40 days the owner or other person having any interest of record in the property will be barred from raising any such objection in any other manner.

2. FOR ADDITIONAL COMPENSATION

- Any person named in a conveyance (deed or easement) may, within 6 months after the date of its recording, appeal for more compensation.
- Any person named in an Award of Damages (condemnation) may, within two years after the date of its recording, appeal for more compensation.
- The appeal for more compensation may be heard by the county condemnation commission, or the party can appeal directly to the circuit court of the county wherein the property is located.
- If the complaint is heard by the condemnation commission, either party can, within 60 days, appeal to the circuit court for a trial.

3. INVERSE CONDEMNATION

Inverse condemnation is the process by which a property owner brings suit against the airport to prove that the sponsor has taken compensable property rights, without payment of just compensation. The sponsor may not intentionally make it necessary for the property owner to institute legal proceedings to prove the fact of the taking of the real property.

B. ATTORNEYS

After an acquisition is referred to legal counsel to represent the sponsor in condemnation litigation, counsel may conduct subsequent negotiations, the selection of trial witnesses, and the settlement and appeal determinations. There should, however, be consultation and exchange of views between counsel and the sponsor's representative having final authority over acquisition matters, or their designees. Prior to a trial or the settlement of any case for an amount substantially different from the established just compensation or any other decision which substantially affects the disposition of a case, the Bureau of Aeronautics Real Estate unit should be involved if there is, or will be federal or state funding for any part of the project. *FAA 5100.37a, 3-31b*

C. FUNDING OF LITIGATION EXPENSES

1. FEDERALLY FUNDED PROJECTS AT OTHER AIRPORTS

Legal fees and related litigation costs determined to be necessary to the accomplishment of a federally funded project and reasonable in amount, are allowable in the same ratio as the rest of the project, assuming there are funds remaining in the project. The Bureau of Aeronautics is responsible for determining what services are necessary for the accomplishment of the project and the reasonableness of legal fees and litigation costs.

2. STATE FUNDED PROJECTS

Reasonable legal fees and related litigation costs for state funded projects are usually eligible for shared funding with the state. The BOA is responsible for determining the eligibility of such funding.

D. ELIGIBILITY OF LITIGATION EXPENSES

Some litigation expenses may be eligible for reimbursement if they fit into the federal or state funding categories. The types of expenses that may be eligible for shared funding are disbursements and expenses, including reasonable attorney, appraisal and engineering fees necessary to prepare for or participate in actual or anticipated proceedings before the condemnation commission, or court. The commission or court awards and the condemnee's litigation expenses are eligible, if the award exceeds the highest written offer prior to the Jurisdictional Offer, and the J.O., by at least \$700 and 15%. *WI ss 32.28*

VIII. PROPERTY MANAGEMENT

A. PROPERTY PROTECTION

After acquisition of a property, and pending its disposal, airport ownership signs may be posted and the local law enforcement agencies should be requested to patrol the areas to prevent theft or vandalism. Arrangements should be made for disconnecting utility services no longer needed. Heating plants and plumbing may be drained and antifreeze installed to prevent damage from freezing. The unoccupied improvements should be immediately locked or otherwise secured. Where deemed appropriate, vacant buildings may be boarded up.

The sponsor's insurance carrier should be notified that the property has been acquired and is now the responsibility of the airport. It is important to maintain liability insurance on these properties.

B. MAINTENANCE

Regular security and maintenance checks should be made for all properties and arrangements should be made for mowing and snow removal if necessary.

C. RENTAL OF PROPERTY

WTSS. 32.05(8), 5100.37a, 8-4, FAA Order 5190.6A & PPM 5190.6

1. SHORT TERM RENTAL

No person occupying real property may be required to move from a dwelling or move his or her business or farm without at least 90 days' written notice of the intended vacation date from the sponsor. The displaced person must have rent-free occupancy of the acquired property for a period of at least 30 days, and not more than 90 days commencing with the next 1st or 15th day of the month after title vests in the sponsor, whichever is sooner. The sponsor may permit a former owner or tenant, after acquisition of the property, to occupy the real property for an additional short term or a period, subject to termination on short notice. However, before entering into such rental agreement, the sponsor should consider construction schedules, compatibility with the airport operations, the liability it assumes on such property, the expenses involved in the maintenance and upkeep of the property while occupied, and the possible difficulty of collecting rent from a short-term occupant. If the sponsor has decided that continued occupancy of the property is prudent, it should:

- a. Establish a rental rate that does not exceed the fair market rent for such occupancy.
- b. Prepare rental agreements
- c. Ensure that tenant maintains renter's and liability insurance for

- duration of lease.
- d. Supervise property and rental collections through the term of the lease.
- e. Monitor occupancy to insure that terms are met.
- f. If leases with third parties other than the former owner or original tenant are contemplated, these leases should specifically preclude eligibility for relocation benefits.
- g. If property is being purchased with federal or state money the rental income is to be credited to the project as long as there is an open project.

2. LONG TERM LEASES

Two major categories in leases require approval from FAA and BOA:

- Lease for any non-aviation use
- Long term (in excess of five [5] years)

It is recommended that the sponsor seek the advice of the Bureau of Aeronautics staff prior to entering into either type of lease agreement. Concurrent use, the use of dedicated airport property for a compatible non-aviation activity while at the same time the property serves the primary purpose for which it was acquired, is allowed. A manufacturing facility within and under the 7:1 transitional, acquired for approach protection, could be a concurrent use, as would agricultural areas, with low growth crops, in the approach surfaces.

It should again be noted that **leasing airport property for non-aviation activities constitutes a change in airport land use, requiring an approved release** from land covenants (agreed to in the Grant Assurances, signed by the sponsor, in previous or current projects) by the Bureau of Aeronautics and the FAA. Other leases of airport property, in conformance with the approved Airport Layout Plan (ALP), do not require approval of the BOA and FAA. All leases must include the appropriate provisions set forth in Appendix 1 of FAA PPM 5190.6.

D. DISPOSAL OF BUILDINGS & OTHER IMPROVEMENTS

When land is purchased, or reimbursed, for airport development purposes, with federal or state funds, all buildings and improvements purchased with the land must normally be removed. Such removal should be done under the direction of a qualified and bonded contractor.

Even though those structures may have considerable value as they stand, they are frequently a liability to the project. In view of the difficulties experienced in selling and removing structures, a desire to limit the liability to which the sponsor

is exposed and in an effort to keep the projects on schedule, these guidelines have been developed for the disposal of buildings and other improvements.

Prior to advertising for bids for removal, all properties and buildings should be inspected for hazardous materials including asbestos.

OPTIONS:

1. If there is a construction project in conjunction with the land acquisition, the removal, demolition, disposal and clean up of the buildings and improvements can be included in the project as a “raze and remove” bid item.

The selected contractor will be responsible for:

- arranging for the public and/or private utility companies to disconnect and remove meters or other facilities.
- disposal of personal property left on premises, including but not limited to furniture, equipment, cars, etc.
- the removal of, and disposal of hazardous materials, including but not limited to paints, oils, asbestos, etc.
- sealing sewer/septic systems, wells and removing home heating oil tanks in a manner in compliance with the requirements of all applicable laws, regulations and ordinances of federal, state and local governments.
- the removal of all structures.
- clearing the entire premises of all decomposable and combustible refuse, debris, and materials resulting from the removal or demolition of all buildings and improvements.
- the removal of concrete, walks, drives, steps, slabs, and basements.
- the removal of any miscellaneous items indicated in the contract documents.
- all permits.
- environmental pollution resulting from the removal or demolition of the structures.
- filling basements and clearing and grading the sites.
- liability insurance and contract bonds as required by the current Standard Specifications for Airport Construction book.

The contractor will have the option of salvaging or selling entire structures to the general public, selling parts of structures, and disposing of the remains at a profit as long as all terms of the contract with DOT, BOA or the sponsor are observed.

Existing airport construction contracts will not be revised by contract change orders to add “razing and removal” of buildings and improvements.

2. If there is no construction project at the time that the land is being acquired, bids should be taken for a separate contract dealing only with the

removal of structures and improvements. Such contracts will be administered in substantially the same manner as a public airport construction contract. Requirements are the same as in Option #1 (one).

3. If the local airport sponsor feels compelled to dispose of the buildings and improvements themselves, we recommend that they observe all the requirements in Option #1 (one). If one or more of the buildings or improvements are deemed salable, they should be sold to the highest bidder by either an auction or by sealed bid. Any funds remaining from the sale after deducting sale expenses will be credited to the project.

IX. SALE OF EXCESS LANDS

FAA Order 5190.6a, Chapter 7, FAA PPM 5190.6 & BOA/PPM 208-16-1

A. DEDICATED AIRPORT PROPERTY

FAA order 5190.6A, 7-2 & 7-37

Any property, when described as part of an airport in an agreement with the United States or the State of Wisconsin, defined on an ALP, or shown on an Exhibit “A” map, is considered to be “dedicated” or obligated for airport purposes by the terms of the agreement. Dedicated land may not be sold or leased for non-aviation purposes without a release from FAA and BOA. If any of the property so dedicated is not needed for present or future airport purposes, an amendment or release from the agreement **may** be granted, if it can be clearly shown that such disposal will produce an equal or greater benefit to the airport, than the continued retention of the land.

When a request has been received, supported by the appropriate documentation and exhibits, an evaluation of the total effect of the owner’s proposal must be made at both the state and federal level.

Requests for information about land releases should be sent to the Bureau of Aeronautics.

B. UNDEDICATED AIRPORT PROPERTY

As long as land has never been shown on any airport maps (e.g., ALP or Exhibit “A”), had any state or federal funding in the purchase, or been described in any agreement with the State of Wisconsin or the federal government, it is not considered dedicated airport property, and as such does not need state and federal approval for a sale. An uneconomic remnant, or extra land purchased as part of a negotiated agreement, may be sold, if it meets the above criteria.

C. DURATION OF GRANT AGREEMENTS

With respect to real property, there is no time limit on the duration of the Assurances against exclusive rights or the terms, conditions and assurances, that the sponsor signs when they accept a Grant. These provisions remain in effect so long as the airport is used as an airport.

X. RECORDS

A. WHAT TO RETAIN IN FILE

- All documents relating to each parcel;
 - 👍 Contracts,
 - 👍 maps,
 - 👍 environmental investigation reports
 - 👍 negotiation diaries,
 - 👍 Title Insurance commitments,
 - 👍 Title Insurance policies,
 - 👍 Title Opinions,
 - 👍 administrative settlements,
 - 👍 appraisals or waivers of appraisal,
 - 👍 offering price letter,
 - 👍 copies of written commitments to property owners,
 - 👍 correspondence,
 - 👍 surveys,
 - 👍 copies of recorded conveyance documents (deeds, easements)
 - 👍 mortgage releases,
 - 👍 condemnation documents,
 - 👍 closing statements and documentation
 - 👍 copies of all bills and checks issued.
- If the sponsor's agency or municipality has the expertise and wishes to do some of the work items for the acquisition, the sponsor must keep accurate records to ensure the allowability of costs for potential reimbursement. Such records should include time sheets reflecting the job or account number chargeable to the project and payroll records certified by a supervisor.

B. CERTIFICATION

FAA PGL 91-1

The sponsor must complete and forward to BOA the "Sponsor Certification For Real Property Acquisition" and other assurances as required. *(See Appendix 98.)*

C. REIMBURSEMENT

If, at some time, the sponsor wishes to apply to the Bureau of Aeronautics for reimbursement of the cost of the acquired land, the Land Cost Summary table, the Closeout Documents table and the documents listed on it, and other documents as requested, must be submitted to the BOA. *(See Appendix page 97 and 96)*

XI. APPENDIX

A. DEFINITIONS

AIRSPACE: the space in the air above the surface of the land, or a particular portion of such space, usually defined by the boundaries of an area on the surface projected upward.

ACQUISITION: the process of acquiring real property (real estate) or some interest therein.

AGENCY: (1) a relationship in which one party (agent) acts for or represents another (principal) under the authority of the latter. (2) a governmental organization or a private person using federal or state financial assistance for a project that acquires real property or displaces a person.

AIRPORT LAYOUT PLAN: a plan for an airport showing boundaries and proposed additions to all areas owned or controlled by the sponsor for airport purposes, the location and nature of existing and proposed facilities and structures, and the location on the airport of existing and proposed nonaviation areas and improvements thereon. This term replaces the “master plan layout” which was formerly used by FAA.

APPRAISAL: A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

APPRAISAL REPORT: An appraisal report is a written document that contains (1) the estimate of value, (2) the date at which the value is estimated, (3) the certification and signature of the appraiser, (4) the purpose of the appraisal, (5) the qualifying conditions, (6) an adequate description of the neighborhood and the property, (7) the factual date, (8) an analysis and interpretation of the data, (9) the processing of the data by one or more of the appraisal methods, (10) other descriptive material (maps, plans, charts, photographs).

APPROACH SURFACE: An imaginary surface longitudinally centered on the extended centerline of the runway, and rising outward and upward on a slope away from the airport, to a specified height above the established airport elevation.

AVIGATION EASEMENT: The right granted by, or taken from, the owner of land near an airport to the use of the airspace above a specific height for the flight of aircraft. The easement prohibits the owner from using the land for structures, trees, signs, stacks, antennae, etc., higher than the altitude specified. It also

addresses the dust, noise and vibrations from the aircraft, and restricts lights, radio waves and electromagnetic emissions. The degrees of such restriction will vary in accordance with the airspace necessary for the safe use of an airfield's runways.

AWARD OF DAMAGES; The legal document by which title is conveyed to a condemning agency.

CLEAR ZONE EASEMENT; a property interest in air space over a particular portion of ground, providing only for protection from obstruction by preventing the erection or growth of all objects above the acquired height limit and the right of entry to remove, mark or light any structures or growth above the acquired surface.

CONDEMNATION: The legal process of acquiring private property for public use or purpose through the power of eminent domain. Condemnation is not usually used until all attempts to reach a mutually satisfactory agreement through negotiations have failed.

CONDEMNOR: the party taking property by condemnation.

CONDEMNEE: the owner of property taken by condemnation

CONVEYANCE DOCUMENTS: deeds, easements and other instruments by which an interest in land is created, mortgaged or assigned.

DNL: Day/night levels - a formula used to determine noise levels around an airport. Noise levels at night are given 10 times more weight than the same decibel level during the day.

EASEMENT: The right of one party to use all or part of the property of another for some specific purpose. Easements can be permanent or temporary (i.e. limited to a stated period of time).

EMINENT DOMAIN: a governmental right to acquire private property for public use by condemnation, and the payment of just compensation.

ENCUMBRANCE: A claim, lien, charge or liability attached to and binding real estate. Any right to, or interest in, land which may exist in one other than the owner, but which will not prevent the transfer of fee title.

FAIR MARKET VALUE: the highest price in terms of money for which the subject property would have sold on the open market on the date of value; the seller having a reasonable time within which to sell and being willing to sell but not forced to do so; the buyer being ready, willing and able to buy but not forced to do so and having a reasonable time and full opportunity to investigate the

property in question and to determine its condition, suitability for use and all of the things that would naturally and reasonably affect its market value.

FEE: See Fee Simple

FEE SIMPLE: an estate under which the owner is entitled to unrestricted powers to dispose of the property, which can be left by will or inherited. Commonly, a term for full ownership of property.

FULL FEE SIMPLE: See Fee Simple

INTEREST: a right, title, or legal share in something. People who share in the ownership of real property have an interest in the property.

JUST COMPENSATION: In condemnation the amount paid to the property owner. The theory is that in order to be "just", the property owner should be no richer or poorer than before the taking.

LIEN: a charge against a property in which the property is the security for payment of a debt. A mortgage is a lien. So are taxes. Customarily, liens must be paid in full when the property is sold.

LAND INVENTORY MAP: a map which shows how, and under what Federal Grant, other federal assistance program, state program or other method, the lands which make up the airport were acquired.

NEGOTIATIONS: the process used by acquiring agencies to reach amicable agreements with property owners for the acquisition of needed property.

PERSON: any individual, partnership, corporation, or association.

PERSONAL PROPERTY: in general, property that can be moved. It is not permanently attached to, or a part of, the real property. Personal property is not to be considered in the appraisal of real property.

PROJECT: Any activity or series of activities undertaken by a federal or state agency. Also, an activity undertaken by a local sponsor where federal or state financial assistance is used in any phase of the activity.

REAL ESTATE: see real property.

REAL PROPERTY: Land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings, such as light fixtures, plumbing and heating fixtures, or other such items which would be personal property if not attached.

REALTY: see real property

SPONSOR: the airport owner, either a corporation or a municipality, or their agent.

SUBORDINATE: place in a lower class or rank. To make subject or junior to.

TAKING: The process of obtaining property for a public purpose by negotiation and/or eminent domain proceedings. Negotiation would involve getting the owner to convey or dedicate property to the public agency. Just compensation must be paid in all acquisitions or takings.

TITLE INSURANCE: Insurance against loss resulting from defects of title to a specifically described parcel of real property.

TITLE INSURANCE COMMITMENT: A report showing the condition of a property's title before a sale and a commitment to insure the condition of title at the time of acquisition.

UNECONOMIC REMNANT: A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

B. ACRONYMS & ABBREVIATIONS

1.	AIS	Agricultural Impact Statement
2.	ALP	Airport Layout Plan
3.	AV. E	Avigation Easement
4.	BOA	Bureau of Aeronautics
5.	CZE	Clear Zone Easement
6.	DATCP	Department of Agriculture, Trade and Consumer Protection
7.	dB	Decibel
8.	DOC	Department of Commerce
9.	DNL	Day/night levels
10.	DOT	Department of Transportation
11.	DNR	Department of Natural Resources
12.	FAA	Federal Aviation Administration
13.	J.O.	Jurisdictional Offer
14.	M.S.L.	Mean Sea Level

C. REFERENCES

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES, ACT OF 1970 -OST
REGULATION, 49 CFR PART 24

Relocation Assistance Manual

Relocation Law Manual

FEDERAL AVIATION REGULATION (FAR), PART 150, AIRPORT NOISE
COMPATIBILITY PLANNING

FAA-FAR Part 77 Objects affecting Navigable Airspace

FAA ADVISORY CIRCULAR:

150/5300-13 Airport Design

FAA ORDERS:

5050.4a Airport Environmental Handbook

5100.37a Land Acquisition & Relocation Assistance for Airport
Projects

5100.38a Airport Improvement Program (AIP) Handbook

5190.6a Airport Compliance Requirements (leases, releases)

FAA PROGRAM GUIDANCE LETTERS (PGLS) National policy letters as
explanations for law:

90-3.2 Requirements for Costs to Acquire Land for Noise
Compatibility

90-3.3 Acquisition of Land By Private Airport Owners

90-4.10 Allowable costs in Conjunction with Acquisition of Noise
Land

90-4.13 Acquisition of a Private Airport by a Public Sponsor

91-2.4 Valuation of Noise Impacted Land

FAA POLICY & PROCEDURE MEMORANDUM (PPM) Regional guidance:

5100.2b Submission of Title Evidence or Title Certification &
Content & Review of Title Evidence

5100.3b Payment for Land Acquisition, Including Advance Payment

5100.8a Audits and Project Closeouts

5190.6a Guidance for Leases, Use Agreements & Land Releases

5210.2 Bird Hazard Reduction - Waste Disposal Facilities

5300.1 Clear Zone Acquisition and Airport Hazard Removal

5300.1a RPZ & Object Clearing Policy/Clear Zone Acquisition &
Airport Hazard Removal

FAA Policy Letter 3/18/91

Wisconsin State Statutes:

#32 Eminent Domain

#114 Aeronautics

#138 Interest

#814 Court Costs and Fees

Wisconsin Administrative Codes:

Chapter Trans 54 - Advance Land Acquisition Loan Program for Airports

Chapter Trans 55 - Conditions of State Aid for Airport Improvement

Chapter Trans 56 - Erection of High Structures

Wisconsin Dept. Of Commerce:

COMM 202

Wisconsin *Highway & Transportation Laws & Rules Manual*

Wisconsin *DOT Facilities & Development Manual*

Wisconsin *DOT Real Estate Program Manual*

LPA Manual (DOT Hwy. ch 2,sec2,sub3)

Wisconsin *Right of Way Acquisition Guide for Local Public Agencies*

Wisconsin Real Estate Law

Wisconsin Real Estate Transaction Guide

Principles of Right of Way, IRWA

Land Titles, IRWA

IRWA Magazine article “Right of Way”

Dept. Of Agriculture, “AG Impact Statement & Procedures”

DNR policy

Illinois DOT Land Acquisition Policies and Procedures Manual

Land Use Planning Around Airports

Uniform Appraisal Standards for Federal Land Acquisitions

D. FORMS AND GUIDES

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ADMINISTRATIVE SETTLEMENT REPORT

Property Owner _____

Proposed Settlement \$ _____
 Approved Offering Price \$ _____ Date of O.P. _____
 Variance \$ _____ Size (Acres/Sq. Ft.) _____

APPRAISALS:	Appraiser	Date of Valuation	Damages
Sponsor's -	_____	_____	_____
Owner's	_____	_____	_____
Review -	_____	_____	_____

Brief Description of Acquisition**REASONS FOR SETTLEMENT:**☐ A. The variance is not substantial.☐ B. The variance is substantial. Settlement is justified as follows:

- ☐ 1. Adjustment of appraisals to valuation date.
- ☐ 2. Recent court or jury awards in the general area in Eminent Domain actions.
- ☐ 3. Uncertainty of compensability for damage or benefit.
- ☐ 4. Inadequacy of appraisal data.
- ☐ 5. Divergence of opinion between all available appraisers (including landowner's).
- ☐ 6. Additional damages due to delay, disruption, omission, etc.
- ☐ 7. Serious doubt as to highest and best use.
- ☐ 8. Extremely complex valuation problems.
- ☐ 9. Other _____

Detailed Explanation of All Items Checked. (Continue on separate sheets if necessary.)**RECOMMENDATION**

 (Real Estate Agent) (Date)

Settlement ☐ Approved ☐ Not Approved

 (Sponsor) (Date)

SPONSOR APPROVAL

 (Signature) (Date)

 (Title)

APPRAISAL GUIDELINES

You have been asked to do an appraisal, or give a proposal to do an appraisal, for property which may be acquired by a Wisconsin airport. Because airports, hereafter called the SPONSOR, are needed for the “public good”, and are usually owned by a municipality, there are additional laws and regulations that must be followed. Airports may acquire property under Wisconsin Statutes Chapter 32, Eminent Domain, (condemnation) and Chapter 114, Aeronautics. The Bureau of Aeronautics or a consultant frequently acts as agent for the SPONSOR.

INFORMATION FURNISHED BY SPONSOR

As soon as possible the SPONSOR, or their agent, will furnish the appraiser with the following information in order to permit the orderly completion of the appraisal(s):

- A list of properties to be appraised by project parcel number.
- All pertinent or known title information which may affect the value of the property including legal descriptions, encumbrances such as outstanding mortgages, leaseholds, liens, easements, and restrictive covenants, if any. Mineral, oil and gas rights should also be identified.
- Prior to commencing work on preparation of the appraisal, the appraiser will be given, if appropriate, the Hazardous Materials Assessment reports and specific instructions to consider the impacts on value of the parcel to be appraised. The appraiser is usually not a specialist or expert on handling hazardous materials or in the cost of control, clean-up or removal, and should not be expected to make these determinations. These matters and related costs should have already been determined by the hazardous materials consultant and the information should be given to the appraiser for consideration in valuing the property.
- Rights or interests to be acquired.
- Where it is desired that the appraiser determine an after value based on the premise that certain adjustments to the improvements are to be made, the appraiser should be specifically advised of such adjustments. Construction features to be undertaken to mitigate damages are considered as adjustments for the purposes of this paragraph.
- Acquisition plans. Plats, maps and surveys of the properties showing boundaries, dimensions, locations of improvements, areas to be acquired, remainders and all other significant features should be furnished for the appraiser’s use.
- Copies of all proposed deeds and easements.
- Information on construction items that might have a bearing upon the appraisal.
- On questionable individual cases, legal counsel should be retained for an interpretation of state laws regarding benefits, lists of damage items considered to be noncompensable and instructions on what to consider in the valuation.
- As applicable, realty/personalty determination.

Note: **Wis. Real Estate Transfer Records:** Certain information about recent real estate conveyances is disclosed on the “**Wisconsin Real Estate Transfer Return**” which must be submitted to the Register of Deeds with documents to be recorded. The information shown on this form includes: name & telephone of grantor, name & telephone of grantee, property physical description & primary use of property, date of transfer and type, terms & value of transfer. As appraiser of property to be acquired under Wisconsin Law of Eminent Domain, you may choose to review these forms to gain information on comparable sales. To do so, contact the real estate agent, Bureau of Aeronautics, to request a letter of authorization to access the transfer forms held in the district office of the Department of Revenue for the county of locale of the properties of interest.

THE APPRAISAL

A full narrative appraisal is a detailed and comprehensive report describing the property that is to be acquired and coming to a documented conclusion as to the fair market value of such property. The report must contain the rationale that has been used by the appraiser to reach an opinion of value and must be documented by market data which supports the appraiser's rationale.

Although such things as definition of fair market value, statement of highest and best use, identification and description of the subject property, neighborhood data, maps, appraiser's certificate, etc. are all integral parts of an appraisal report, they are not the essentials to a "full narrative appraisal".

What is intended and what is considered essential in order to qualify as a "full narrative appraisal" is an adequate consideration of factors affecting fair market value. The following items are considered to be essential:

Purpose of the appraisal

The purpose of the appraisal will be stated, which includes a statement of value to be estimated and the rights or interests being acquired.

Description of the property

- Legal description
- Parcel number as it relates to the airport's Exhibit "A" map
- Name of apparent owner(s) of each interest being evaluated
- Pertinent title information
- Location of property
- A minimum of 5 years sales history of the property
- Statement of known and observed encumbrances, including existing avigation easements, leases, signs, etc., if any
- Total area of property in acres &/or square feet
- Area of each interest in property being acquired in acres &/or square feet
- Present use and zoning and, if available, the potential use as reflected by a local comprehensive land use plan
- Utilities, existing and available
- Type and condition of all above/below ground improvements and special features that may add to or detract from the value of the property
- Any tenant-owned improvements must be identified

Documentation

- Highest and best use
- Before and after valuation method should be used in partial acquisitions except where it is obvious there is no damage or benefit to the residue land or improvements.
- Less than full fee title. Easements and partial acquisitions should be prepared on the before and after basis.
- Approaches to value should include sales, cost and income, except when there are sufficient market sales data comparable to the property being appraised, in which case the appraiser may rely on the sales comparison approach only. However, when an approach is not used, the appraiser should state why it was not used.
- Benefits are to be offset against the value of the part acquired and/or damages to the remainder in accordance with Wis. SS 32.09 (6),(6g),(6r). The after value appraisal must eliminate any consideration of damages that are not compensable or benefits not allowable under state law even though they may exist in the ultimate value of the remaining property on the market.
- The appraisal of the after value must be supported to the same extent as the appraisal of the before value.

- The difference between the before and after will represent the value of the property to be acquired including the damages and/or benefits to the remainder property. The appraiser must separately analyze and tabulate the difference showing a reasonable allocation to land, improvements, damages, and benefits.
- When more than one approach to value is used, the appraiser must show a correlation of the separate indications of value derived by each approach along with the reasonable explanation for the final conclusion of value. This correlation will be included for both before and after appraisals.
- Reasons for not using an approach if one is excluded.
- All appraisals should include photographs of the subject property including all principal above-ground improvements or unusual features affecting the value of the property to be acquired or damaged.
- An appraisal for a property being totally acquired should contain a sketch or survey of the property showing boundary dimension, location of above and below ground improvements, access (public/private roads), and other significant features of the property. For a partial acquisition, the sketch or survey should also show the area to be acquired, relation of improvements to the acquired area, and area of each remainder. For an appraisal of residential improvements, a sketch should be included depicting the interior room layout.

Comparable sales

- Each appraisal must contain or make reference to the comparable sales that were used in arriving at the market value estimate.
- The appraiser must state the date of sale, names of parties to the transaction, consideration paid, method of financing, conditions of sale and with whom these were verified, the location/address of the sale property, total area, type of improvements, easement encumbrances, mineral, oil, gas interests included in sale, appraiser's estimate of highest and best use at the date of sale, zoning, and any other data pertinent to the analysis and evaluation thereof.
- If the appraiser is unable to verify the financing and conditions of the sale from the usual sources such as buyer, seller, broker, title company, etc., it will be so stated.
- Pertinent comparable sales data should include identified photographs of all principal above ground improvements or unusual features affecting the value of the comparable sale.
- The appraiser should prepare a comparable sales map showing the location of the sale properties and their relation to the project.
- A data and analysis sheet must be prepared for each sale or listing used as a comparable in the preparation of an appraisal. Explanation and reasoning for adjustments used are required.
- For noise impacted properties, sales used as comparables must be as similar as possible to the property being appraised as to noise, location, community services, size, time of sale, and the terms of the transaction. The current market value of the subject property is appraised as it presently sits on the existing site since valuation of noise impacted land through the appraisal process is accomplished in the same manner as land being appraised for an airport development project.
- If comparable sales can not be found in a similarly noise impacted neighborhood as the subject property, the appraiser can move farther out from the impacted area to where comparable sales can be found; however, in these instances, appropriate adjustments must be made to reflect the actual market value of the subject property in its current environmental condition as affected by noise.
- Selecting sales as comparables with the specific intent of using only those sales outside of the airport influence or noise impacted areas is not an acceptable practice.

Inspection of properties

- THE PROPERTY OWNER **MUST** BE AFFORDED THE OPPORTUNITY TO ACCOMPANY THE APPRAISER AT THE TIME OF THE INSPECTION OF THE SUBJECT PROPERTY.
- All property appraised, and the comparable sales that were relied upon in arriving at the market value estimate, will be personally inspected by the appraiser.
- All dates of such inspection will be shown in the appraisal.

Date of valuation

- This is the effective date to which the appraisal valuation data applies.

Assumptions and limiting conditions

- Include a statement of appropriate assumptions and limiting conditions, if any.

Certification

- Each appraisal must contain an appraiser's certification that states that to the best of his or her knowledge and belief, the appraisal was conducted in an objective manner and that the conclusions are correct. A new certificate will be prepared when there is a change in the appraisal report which affects the estimate of just compensation or changes the date of valuation. The Certificate of Appraiser, is a format that should be used, as it has the language regarding the owner having the opportunity to accompany, and confer with, the appraiser. *See Appendix page 93* (Note: This certification is required in addition to the certificate that may be required of the appraiser in accordance with the Uniform Standards of Professional Appraisal Practice.) Include the certification, signature, and date of signature of the appraiser.

APPRAISING LESS THAN FULL FEE SIMPLE INTEREST

Where the acquisition involves only a portion of the property, the appraiser must develop the severance damage, if any, to the remainder, including the reasoning and sales data to support the conclusion. The parcel to be examined by the appraiser is the entire land titled to the same owner and contiguous to the parcel to be acquired. The 'before and after' method of appraisal is expected to be used. In most cases where a property will be divided or some rights (but less than full fee) will be taken, a 'full narrative or detailed appraisal' will be required. If the situation is such that the remainder may be an uneconomic remnant, the appraiser should so indicate; however, it is the responsibility of the Sponsor to make this decision. Occasionally, there will be a parcel that could be purchased in fee simple, but we could get by with an easement. In that case, and in the case of an uneconomic remnant, doing the "before and after", full narrative appraisal will actually give you both prices.

When only a small amount of land is being acquired from a large tract and the remainder is not being materially affected, such as a change in the highest and best use or evidence of diminution of value, only that area being acquired needs to be appraised. In these instances, the highest and best use of the part to be acquired must reflect the same highest and best use of the remainder. Examples of less than full fee interest acquisitions are;

- **PART OF WHOLE IN FEE SIMPLE**
Fee simple acquisition of only a part of an owner's property.
- **CLEAR ZONE EASEMENT**
An easement that restricts all building, and growth of trees or plants from the level of the ground. The land itself is not acquired. Usually the land can still be used for the farming of low growing plants. An Aviation Easement should always be included with a Clear Zone Easement taking.
- **AVIGATION EASEMENT**
An easement giving a property interest in air space over a particular portion of ground, providing for, among other things, the right of flight; the right to cause noise and dust, etc.; the right to remove all objects protruding into the airspace and the right to enter the land to enforce the rights required. The airspace height is determined by the approach requirements of the Airport Layout Plan. The degrees of such restriction will vary in accordance with the glide angle plane necessary for the safe use of an airfield's runway.
- **LIFE ESTATES**
A life estate is the right to reside on the property until death even though the property is sold. It is not a recommended method of land acquisition and it is unlikely that either FAA or BOA will approve reimbursement of land purchased with a life estate granted until the life estate has been extinguished.

BILLING INSTRUCTIONS FOR PROPERTY OWNER'S APPRAISAL

If you have been asked by a property owner, whose property may be acquired, to make an appraisal, you must follow these billing instructions for your fee to be paid by the SPONSOR or the Bureau of Aeronautics. In order for the Bureau of Aeronautics to determine the reasonableness of the appraisal fee, the appraiser should submit a detailed breakdown of the time involved. For example, the appraiser should indicate the dates and hours spent inspecting the subject property, inspecting and verifying comparable sales, drafting the report, etc. Also indicate the hourly rate charged. The appraisal and bill should be submitted to the property owner or the property owner's designated representative, who must then present the appraisal and the bill for payment to the Bureau of Aeronautics within the 60-day limit determined by Wisconsin ss 32.05(2)(b). The statute states that "The owner shall submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal." Bills should also include a copy of the appraiser's qualifications (unless already included as a part of the appraisal report).

The reasonableness of the fee will be judged by the content of the appraisal and by the complexity of the appraisal problem. The appraiser is expected to exercise good judgment in this matter and should understand that the appraisal fee is to be commensurate with the scope of the appraisal need. The fee charged should not only be commensurate with the contents of the report, but also be reasonable in relation to the complexity and dollar value of the damages.

The appraiser is also cautioned that the Bureau of Aeronautics does not consider consultation with the owner (other than during the actual property inspection), the owner's attorney or time spent reviewing the department's appraisal to be costs to be borne by the acquiring public agency.

In order to be of value to the owner, your appraisal should deal fully with the appraisal problem at hand. Mere assertions or opinions without an explanation or without an analysis are not useful. The more complete and thorough your explanation is, the more service you will be to your client.

Although we do not pay the property owner's appraiser for reviewing the acquiring public agency appraisal, we know this review happens with some regularity. As a result of this "review", there have been instances where an appraiser has been willing to include large portions of the public agency's appraisal, and would prefer, in the interest of cost effectiveness, not to duplicate such effort.

Also accepted as a "full narrative appraisal" are abbreviated reports as indicated above, provided the appraiser does the following:

1. Specifically states which parts of the state's appraisal adopted for application.
2. The market approach is complete, either by adoption of the public agency's appraisal, **or** the appraiser provides a complete market approach which includes a direct comparison of the property to specific comparable sales with an analysis of differences.

Also accepted are abbreviated reports when the damage or compensation amount is \$5,000 or less. Such abbreviated reports avoid unnecessary expenditure of public funds on appraisal fees for nominal low value parcels where payments to property owners are relatively small. The appraiser therein includes reference to comparable sales and an explanation of the damage figure.

All appraisers doing work for airports should be familiar with Wisconsin Statutes, Chapter 32.09 and FAA Order 5100.37a, Chapter 2 prior to beginning the appraisal process. (Copies can be obtained from the Wisconsin DOT, Bureau of Aeronautics, Real Estate, at PO Box 7914, 4802 Sheboygan Ave., Madison, WI 53707-7914 or by calling 608-266-1906) and requesting copies.)

Document Number
AVIGATION EASEMENT

Wisconsin Department of Transportation - Aeronautics
Exempt from fee: s.77.25(12) Wis. Stats.
DT1467 97 Ch. 114 Wis. Stats.

THIS EASEMENT, made by _____,

GRANTOR, conveys a perpetual easement as described in "Addendum A" to the _____, **GRANTEE**, for the sum of _____

dollars (\$_____) for the purpose of obtaining and preserving for the use and benefit of the public a right of free and unobstructed flight for aircraft landing upon, taking off from, or maneuvering about the said airport.

Any person named in this document may make an appeal from the amount of compensation within six months after the date of recording of this document as set forth in s.32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on this document shall be treated as the award, and the date this document is recorded shall be treated as the date of taking and the date of evaluation.

Other persons having an interest of record in the property: _____

This (is) (is not) homestead property.

Legal Description

This space is reserved for recording data

Return to:

Wisconsin Department of Transportation
Bureau of Aeronautics - Real Estate
4802 Sheboygan Avenue - Room 701
PO Box 7914
Madison, WI 53707-7914

Parcel Identification Number/Tax Key Number

THE CONDITIONS OF SAID AVIGATION EASEMENT OVER THE ABOVE DESCRIBED PARCEL ARE AS STIPULATED IN THE ATTACHED "ADDENDUM 'A'".

(Signature)

(Print Name)

FEIN/SS#

(Signature)

(Print Name)

(Date)

State of Wisconsin

_____) ss.
County

On the above date, this instrument was acknowledged before me by the above-named person(s) or officers.

(Signature, Notary Public, State of Wisconsin)

(Print or Type Name, Notary Public, State of Wisconsin)

(Date Commission Expires)

Airport _____

Project ID _____

This instrument was drafted by _____

Parcel No. _____

**ADDENDUM A
AVIGATION EASEMENT CONDITIONS**

The **GRANTEE** is the owner and operator of the _____ Airport, situated in the said County of _____, State of Wisconsin, and in close proximity to the land of the **GRANTOR**, and the **GRANTEE** desires to obtain and preserve for the use and benefit of the public a right of free and unobstructed flight for aircraft landing upon, taking off from, or maneuvering about the said airport.

1. _____, hereinafter called the **GRANTOR**, for themselves, their heirs, successors and assigns, do hereby give and grant to the **GRANTEE** for the use and benefit of the public, a perpetual easement and right-of-way for the free and unobstructed passage of aircraft, and the right to cause such sound, noise, vibration, and dust as may be inherent in the operation of such aircraft, at such altitude or height above the surface of the ground in, through and across the airspace over and above those parts of the **GRANTOR'S** lands which are bounded and described in the legal description made a part of this agreement, provided, however, that the airspace in which the said easement and right-of-way is herein granted shall be that which lies above the following:

EASEMENT HEIGHT DESCRIPTION:

Determination of objects which encroach into the easement shall be based on the M.S.L. elevation(s) indicated in the easement height description.

2. The **GRANTOR** for themselves, their heirs, successors and assigns, do hereby covenant that they shall not construct nor permit to retain upon said land any object that extends above the heights included in the easement height description.

3. The **GRANTOR**, for themselves, their heirs, successors and assigns, does hereby further give to the **GRANTEE**, a continuing right of entry to keep the airspace above the easement heights clear free for the purpose of effecting and maintaining such clearances and of removing any and all objects which now or may hereafter extend above the easement height description.

4. The **GRANTOR** shall not hereafter use or permit or suffer the use of said land in such a manner as to create radio or electromagnetic interference with radio communications between the airport and aircraft.

5. The **GRANTOR** shall not permit lights, lighted signs, and other lighted objects as to make it difficult for pilots to distinguish between airport lights and others, or as to result in glare in the eyes of pilots using the airport, or as to impair visibility in the vicinity of the airport, or otherwise to endanger the landing, taking off or maneuvering of aircraft.

It is understood and agreed that these covenants and agreements shall be binding upon the heirs, administrators, executors and assigns of the parties, that these covenants and agreements shall run with the land, and that for the purposes of this instrument, the real estate described in this easement and owned by the **GRANTOR** shall be the servient tenement, and the **GRANTEE** shall be dominant tenement.

Airport _____

Project ID _____ This instrument was drafted by _____

Parcel No. _____

CERTIFICATION BY APPRAISER

Airport: _____

Location: _____

Project ID: _____

Parcel: _____

I HEREBY CERTIFY:

That on _____ (date)(s), I personally made a field inspection of the property herein appraised and **that I have afforded the property owner the opportunity to accompany me at the time of inspection.** I have also personally made a field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs contained in said appraisal or in the data book or report that supplements the appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal attached hereto are true and the information contained therein upon which the opinion of value expressed below is based is correct, subject to the limiting conditions set forth in the appraisal.

That I understand this appraisal is to be used in connection with the acquisition of land or other property interest, for an airport project by _____ with the assistance of FAA funds, other Federal funds or State of Wisconsin funds.

That such appraisal has been made in conformity with the appropriate Wisconsin Statutes, regulations and policies and procedures applicable to appraisal of land for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under established Wisconsin laws.

That any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within reasonable control of the owner, has been disregarded in determining the compensation for the property.

That neither my employment nor my compensation for making this appraisal are in any way contingent upon the values reported herein.

That I have no direct or indirect, present or contemplated, future personal interest in such property or in benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring agency of said airport or officials of the Federal Aviation Administration and I will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That the conclusion set forth in this appraisal is my independent opinion of the value of the property as of the _____ day of _____, 19____, and that such conclusion was reached without collaboration or direction as to value.

Value before acquisition \$ _____

Value after acquisition \$ _____

Value difference \$ _____

The opinion of value expressed above is the result of and is subject to the data and conditions described in detail in this report of _____ pages.

Date of contract _____

Typed name _____

Signature _____

Date _____

Note. - Other statements, required by the regulations of an appraisal organization of which the appraiser is a member or by circumstances connected with the appraisal assignment or the preparation of the appraisal, may be inserted where appropriate.

Document Number

CLEAR ZONE AND AVIGATION EASEMENT

Wisconsin Department of Transportation - Aeronautics

Exempt from fee: s.77.25(12) Wis. Stats.

DT1466 97 Ch. 114 Wis. Stats

THIS EASEMENT, made by _____, **GRANTOR**, conveys a perpetual easement, as described in "Addendum A", to the _____, **GRANTEE**, for the sum of _____ dollars (\$_____) for the purpose of airport approach protection.

Any person named in this document may make an appeal from the amount of compensation within six months after the date of recording of this document as set forth in s.32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on this document shall be treated as the award, and the date this document is recorded shall be treated as the date of taking and the date of evaluation.

Other persons having an interest of record in the property: _____

This (is) (is not) homestead property.

Legal Description

This space is reserved for recording data

Return to:

Wisconsin Department of Transportation
Bureau of Aeronautics - Real Estate
4802 Sheboygan Avenue - Room 701
PO Box 7914
Madison, WI 53707-7914

Parcel Identification Number/Tax Key Number

THE CONDITIONS OF SAID CLEAR ZONE EASEMENT OVER THE ABOVE DESCRIBED PARCEL ARE AS STIPULATED IN THE ATTACHED "ADDENDUM A".

(Signature)

(Date)

(Print Name)

State of Wisconsin

FEIN/SS#

County } ss.

On the above date, this instrument was acknowledged before me by the above-named person(s) or officers.

(Signature)

(Signature, Notary Public, State of Wisconsin)

(Print Name)

(Print or Type Name, Notary Public, State of Wisconsin)

(Date Commission Expires)

Airport _____

Project ID _____

This instrument was drafted by _____

Parcel No. _____

ADDENDUM A
CLEAR ZONE AND AVIGATION EASEMENT CONDITIONS

The **GRANTEE** is the owner and operator of the _____ Airport, situated in the said County of _____, State of Wisconsin, and in close proximity to the land of the **GRANTOR**, and the **GRANTEE** desires to obtain and preserve for the use and benefit of the public a right of free and unobstructed flight for aircraft landing upon, taking off from, or maneuvering about the said airport.

For the protection of aircraft landing and taking off at the above named Airport, it is deemed necessary that the land in the immediate approach to the runways of the said airport be, and remain clear of any buildings, structures, objects, growths, or assemblies of persons, other than air navigation facilities.

1. _____ hereinafter called the **GRANTOR**, for themselves, their heirs, successors and assigns, do hereby give and grant to the **GRANTEE** for the use and benefit of the public, a perpetual easement and right-of-way for the free and unobstructed passage of aircraft, and the right to cause such sound, noise, vibration, and dust as may be inherent in the operation of such aircraft, at such altitude or height above the surface of the ground in, through and across the airspace over and above those parts of the **GRANTOR'S** lands which are bounded and described in the legal description made a part of this agreement.

2. The **GRANTOR** for themselves, their heirs, successors and assigns, do hereby covenant and agree that they shall not erect maintain or allow any buildings, structures, or objects to remain or be placed on the real estate described in the legal description made a part of this agreement, or will not permit any growths thereon; provided, however, that the **GRANTOR** reserve unto themselves, their heirs, successors and assigns, the right to use the said land for any farming purposes including pasturage, and may erect fences, temporarily store and grow farm crops and bring farm machinery on the land temporarily as necessary to carry out farming operations; and provided further that the **GRANTOR** do further reserve unto themselves, their heirs, successors and assigns, the right to retain, use and maintain in their present form and location the following: _____

3. The **GRANTOR**, for themselves, their heirs, successors and assigns, does hereby further covenant and agree that they will not use or suffer the said land to be used by any assembly of persons or in such manner as might attract or bring together an assembly of persons thereon.

4. The **GRANTOR**, for themselves, their heirs, successors or assigns, do hereby further give and grant to the **GRANTEE** a continuing right of entry upon the said land for the purpose of removing and preventing the construction or erection of any buildings, structures, or facilities, and the clearing of trees or other growths or objects on the land, other than those herein expressly excepted.

5. The **GRANTOR** shall not hereafter use or permit or suffer the use of said land in such a manner as to create radio or electromagnetic interference with radio communications between the airport and aircraft.

6. The **GRANTOR** shall not permit lights, lighted signs, and other lighted objects as to make it difficult for pilots to distinguish between airport lights and others, or as to result in glare in the eyes of pilots using the airport, or as to impair visibility in the vicinity of the airport, or otherwise to endanger the landing, taking off or maneuvering of aircraft.

7. The **GRANTOR** shall not use or permit or suffer use of said land in such manner as to create a potential for attracting birds or other wildlife which may pose a hazard to aircraft.

8. It is understood and agreed that these covenants and agreements shall be binding upon the heirs, administrators, executors and assigns of the parties, that these covenants and agreements shall run with the land, and that for the purposes of this instrument, the real estate described in this easement and owned by the **GRANTOR** shall be the servient tenement, and the **GRANTEE** shall be dominant tenement.

Airport _____

Project ID _____

This instrument was drafted by _____

Parcel No. _____

[illegible]

LAND COST SUMMARY

[illegible]

SPONSOR CERTIFICATION FOR REAL PROPERTY ACQUISITION

Sponsor's Name _____
 Airport Name _____
 Project Number _____

Project Description: _____

Section 509(d) of the Airport and Airway Improvement Act of 1982, as amended (herein called the Act), authorizes the Secretary to require certification from Sponsors that they will comply with statutory and administrative requirements. The following list of certified items includes major requirements for this aspect of project implementation. However, the list is not comprehensive, nor does it relieve Sponsors from fully complying with all applicable statutory and administrative standards. Every certified item must be marked. Each certified item with a "no" response must be fully explained in an attachment to this certification. If the item is not applicable to this project, mark the item "N/A". General requirements on real property acquisition and relocation assistance are in 49 CFR 24. Specific requirements and assurances are in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). **STATE OF WISCONSIN, COUNTY AND LOCAL LAWS AND RULES MUST BE FOLLOWED, ESPECIALLY, WISCONSIN STATUTES, CHAPTER 32 AND 114, AND WISCONSIN DEPARTMENT OF COMMERCE ADMINISTRATIVE RULE, DOC 202.**

1. Surveys of each parcel have been made in accordance with the BOA Surveys, legal Descriptions and Sketch or Exhibit "A" Map Guide & Checklist

Yes ☐ No ☐ N/A ☐
2. A Relocation Plan was filed with, and approved by Department of Commerce, prior to any acquisition activities, if any acquisition involves displacement of a person, business or farm operation.

Yes ☐ No ☐ N/A ☐
3. Information regarding property owner's rights under the law and the appropriate DOC brochures; "The Rights of Landowners Under Wisconsin Eminent Domain Law", "Wisconsin Relocation Rights - Residential", and "Wisconsin Relocation Rights - Business, Farm and Non Profit Organizations", were given to property owners prior to negotiations.

Yes ☐ No ☐ N/A ☐
4. Appraisals include valuation data to estimate the current market value for the property interest acquired on each parcel and were prepared by qualified real estate appraisers hired by the Sponsor. An opportunity was provided for the property owner or representative to accompany appraisers during inspections.

Yes ☐ No ☐ N/A ☐
5. Each appraisal has been reviewed by a qualified review appraiser to recommend an amount for the offer of just compensation. The written appraisals and review appraisal are available to BOA and FAA for review.

Yes ☐ No ☐ N/A ☐
6. A written offer to acquire each parcel, for not less than the approved amount of just compensation, was presented to the property owner.

Yes ☐ No ☐ N/A ☐

7. Every effort was made to acquire each property through negotiation with no coercive action to induce agreement. If negotiation was successful, project files contain supporting documents for settlements.
- Yes ☐ No ☐ N/A ☐
8. This project complies with the separation of function standard which requires that the person who conducts the negotiations must not make the appraisal or act as the review appraiser.
- Yes ☐ No ☐ N/A ☐
9. Relocation assistance services, comparable replacement housing, and payment of necessary relocation expenses were provided within a reasonable time period for each displaced occupant in accordance with the Uniform Act and DOC 202.
- Yes ☐ No ☐ N/A ☐
10. If displacement of persons, businesses, farm operations, or nonprofit organizations is involved, a relocation assistance program was established in accordance with the Uniform Act and DOC 202. Displaced persons received general information on the relocation program in writing, notice of relocation eligibility, and a 90-day notice to vacate.
- Yes ☐ No ☐ N/A ☐
11. A Relocation Order was filed with the county clerk prior to beginning condemnation.
- Yes ☐ No ☐ N/A ☐
12. If a negotiated settlement was not reached, condemnation was initiated and funds of not less than the just compensation amount, were deposited with the court, prior to possession of the property. Project files contain supporting documents for awards. All condemnation proceedings were performed in accordance with Wis SS 32.05.
- Yes ☐ No ☐ N/A ☐
13. For any and all acquisition of property interest in noise sensitive approach zones and related areas, property interest was obtained to ensure land is used for purposes compatible with noise levels associated with operation of the airport.
- Yes ☐ No ☐ N/A ☐
14. For any acquisition of property interest in runway protection zones and areas related to FAR Part 77 surfaces, property interest was obtained for the right of flight, right of ingress and egress to remove obstructions, right to make noise associated with aircraft operations, and the right to restrict the establishment of further obstructions.
- Yes ☐ No ☐ N/A ☐
15. If defects and/or encumbrances exist in the title which adversely impact the Sponsor's intended use of property in the project, they have been extinguished, modified, or subordinated.
- Yes ☐ No ☐ N/A ☐
16. The following statement has been incorporated into the language on all conveyance documents: "Any person named in this conveyance may make an appeal from the amount of compensation within six months after the date of recording of this conveyance as set forth in s. 32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on the conveyance shall be treated as the award, and the date the conveyance is recorded shall be

treated as the date of taking and the date of evaluation.”

Yes ☐ No ☐ N/A ☐

17. Good and sufficient title is held on property in the project. The Sponsor's attorney or other official has on file title evidence on the property.

Yes ☐ No ☐ N/A ☐

18. The Sponsor has provided BOA with an acceptable, updated Exhibit “A” map, which complies with FAA Order 5100.38a, ¶1009, and an updated ALP land inventory map prior to completion of the project. Property in the project is in conformance with the Exhibit “A” (property map). The property maps are based on deeds, title opinions, land surveys, the approved Airport Layout Plan, and project documentation.

Yes ☐ No ☐ N/A ☐

19. Wisconsin DOT-BOA has been furnished with a copy of all documents (surveys, title insurance commitments, title insurance policy and conveyances.)

Yes ☐ No ☐ N/A ☐

20. If property for airport development is leased, the term is for 20 years or the useful life of the project. The lessor is a public agency and the lease contains no provisions which prevent full compliance with grant agreements.

Yes ☐ No ☐ N/A ☐

If you answered NO to any of the above questions, please explain.

I CERTIFY THAT, FOR THE PROJECT IDENTIFIED HEREIN, THE RESPONSES TO THE FOREGOING ITEMS ARE CORRECT AS MARKED, AND THAT THE ATTACHMENTS, IF ANY, ARE CORRECT AND COMPLETE.

By: _____
consultant real estate agent/negotiator

Date: _____

By: _____
Sponsor/Airport Owner

Date: _____

_____(Date)

To:

_____(Title & Abstract Co.)
 _____(address)
 _____, (City) WI _____(Zip)

Re:

_____(Airport)
 _____, (City) Wisconsin
 _____(Project #)

Subject:

Title Insurance Commitments

We expect to be purchasing _____(#) parcels in fee, _____(#) Clear Zone Easements and Avigation Easements over _____(#) parcels in the approaches to the _____
 __Airport. We will be purchasing a Title Insurance policy for these parcels.

Due to federal government regulations I will need to have all charges and costs broken down two ways. I need the cost associated with doing the work as detailed in this letter. Then, as the federal government does not recognize and include the cost of title insurance as a part of project cost, I will need your estimate of what the charges would be to have title search, opinion, abstract update and final opinion done. *(Use this paragraph only if there is expected to be federal financial participation)*

We will furnish the Title Company with maps and the parcel description.

The Title Company will complete and deliver, as completed, two (2) copies of a title commitment, indicating, for each parcel:

- (a) Names of all present owners.
- (b) Mortgages and other lien holders with data as to recordings of said liens.
- (c) Copies of all other encumbrances such as utility, highway, and miscellaneous easements.
- (d) Delinquent real estate taxes, delinquent state and federal tax liens, future special assessments, liens, judgments and Old Age Assistance Liens.
- (e) Complete description of all land in the conveyance quoted which includes the parcel searched, with recording data, revenue stamps, and acreage if available or easily computed.
- (f) All sales, if part or whole ownership, which include each parcel searched for a period of five (5) years prior to date of search, with recording data, revenue stamps, acreage if available, consideration, grantor and grantee, and any special or other provisions or conditions of the sale.

A parcel as referred to in this agreement includes not only a single tract of land embraced within a particular description, but also all contiguous tracts in a common ownership. Contiguous lots in a

platted subdivision, in common ownership, constitute a single parcel for purposes of this agreement. Please contact me regarding any additional contiguous lands of which we may not be aware. We may, or may not be, purchasing the whole parcel.

It is understood that we may designate as parcels, certain rights and services which it must acquire, other than fee simple title.

I will be asking your company to coordinate the closings and the recording of the documents for most of these parcels. I understand from our telephone conversation that you expect to have the commitments to me by _____ (Date) and that the charge for closings is \$ _____ per closing.

The following is a list of the parcels and the interest to be acquired

#	Owner	Address	Amount of Insurance Required	Interest to be acquired

If you have any questions please don't hesitate to call me at (____) _____.

Sincerely;

VALUE FINDING FOR LOW VALUE ACQUISITION

Airport _____ **County** _____
Project _____ **Parcel Number** _____
Property Owner(s) _____
Address _____ **City** _____ **Zip** _____

Area To Be Acquired

Area (Square Feet or Acreage)	
Times	\$
Value of Area Acquired	\$

Value per Square foot or per acre supported by land value in comparable sales numbers \$_____.

Estimated Value of Each Improvement to be Acquired

Value of each improvement to be acquired (or cost to cure). Material and labor cost should be documented to the airport's files for the project.

Items	Dollar Amount
1.	\$
2.	\$
3.	
Total	\$

Summary

Items	Dollar Amount
Value of Area to be Acquired	\$
Value of Improvements to be Acquired (or Cost to Cure)	\$
Total Value (not to Exceed \$2,500.00)	\$
Date of Valuation:	
Remarks:	
Signature of Appraiser or Qualified Employee	Printed or typed Name
Date	

FAA/BOA Shell

WAIVER OF APPRAISAL

Owner: _____

Acquisition of: _____

Interest Required: _____

The undersigned owner(s) of the above lands designated as parcel # _____ of the _____
 _____ Airport Improvement Project No. _____, agree to
 accept settlement in the amount of \$ _____ as full
 compensation for the property interest as set forth in _____, subject to
 approval of the _____.

(Sponsor)

The undersigned property owner(s), having been fully informed of the rights of landowners under
 Wisconsin Eminent Domain Law, Sec. 32.05, Wisconsin Statutes, to have the property appraised, and to
 receive just compensation based upon an appraisal, have decided to waive the right to an appraisal.

The undersigned owner(s) further state(s) that the decision to waive the right of an appraisal was made
 without undue influence or coercive action of any nature.

It is agreed that the instrument of conveyance of the property interest will be executed and signed upon
 presentation to the property owner(s) by agents or representatives of the _____
 _____ Airport.

Dated this _____ day of _____, 19__.

Property Owner:

Signature_____
Date_____
Print Name

Property Owner:

Signature_____
Date_____
Print Name

Property Owner:

Signature_____
Date_____
Print Name

initials__

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DISCLAIMER

The policies and procedures established in this guide are intended solely for the guidance of airport owners seeking state or federal fund reimbursement for land acquisition. They are not intended to create any rights, substantive or procedurally enforceable by any party in litigation with the State of Wisconsin or its agencies.